A

DIGEST

OF

HINDU LAW

ON

CONTRACTS AND SUCCESSIONS:

WITH A COMMENTARY

BY

JAGANNÁT'HA TERCAPANCHÁNANA:

TRANSLATED FROM THE

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BOOK II.

ON DEPOSITS, SALE WITHOUT OWNERSHIP, CONCERNS AMONG PARTNERS, AND SUBTRACTION OF WHAT HAS BEEN GIVEN.

CHAPTER I.

ON DEPOSITS AND OTHER BAILMENTS.

SECTION I.

ON THE SEVERAL SORTS OF BAILMENT.

1.

VRĬHASPATI:—UNDER the title of loans and payment, the law has been declared, from the delivery of the loan and so forth, to the recovery of the debt: now hear the complete rules for deposits *and other bailments.*

"DELIVERY" or advance; delivery to a borrower asking a loan in these words, "lend me money:" of course *it means* the delivery of money *thus* becoming a loan Beginning with this and ending with compulsory payment, that is, with the recovery of the debt, the title of law, called loans and payment, has been promulged The proper order of the subject is thus intimated, for MENU, enumerating the eighteen titles of law, has first

 mentioned

mentioned loans, and next depoſits: the pupil, therefore, is firſt required to ſtudy the law of loans, and next that of depoſits, becauſe it is next in order.

II.

MENU:—OF thoſe *titles*, the firſt is debt on loans for conſumption; *the ſecond*, depoſits, and loans for uſe; *the third*, ſale without ownerſhip; *the fourth*, concerns among partners; *the fifth*, ſubtraction of what has been given;

2. *The ſixth*, nonpayment of wages or hire; *the ſeventh*, nonperformance of agreement; *the eighth*, reſciſſion of ſale and purchaſe; *the ninth*, diſputes between maſter and ſervant;

3. *The tenth*, conteſts on boundaries; *the eleventh*, aſſault and ſlander; *the twelfth*, larceny; *the thirteenth*, robbery and other violence; *the fourteenth*, adultery;

4. *The fifteenth*, altercation between man and wife, and their ſeveral duties; *the ſixteenth*, the law of inheritance; *the ſeventeenth* and *eighteenth*, gaming with dice and with living creatures: theſe eighteen titles of law are ſettled as the groundwork of all judicial procedure in this world.

AMONG theſe eighteen titles of law, that of loans and payment is firſt diſcuſſed in this work. Its definition has been propounded by NA'REDA (Book I, v. 1). Bailment, conſiſting in the intruſting of one's own property with another perſon; ſale made by one, who is not owner of the effects ſold; the mode of proceeding among aſſociated traders and the like; the reſumption of effects given away, believing of the donee an improper object of donation, or through anger, or the like; nonpayment of wages, or of the hire of a ſervant or labourer; breach of contract; reſciſſion of purchaſe, and reſciſſion of ſale; diſputes between maſter and herdſman; conteſts on the boundaries of towns and the like; ſlander, or contumelious invective

tive and so forth; assault, or battery and similar injuries; larceny, or private stealing; robbery, or violent seizure of property: adultery, or intercourse of a woman with a man other *than her husband;* duties of a husband with his wife; distribution of the paternal estate or the like; "gaming with dice," that is, play; "gaming with living creatures," or fights of birds, rams, and other living creatures: these eighteen titles of law are the groundwork of judicial procedure. Challenges, or gaming with living creatures, being distinguished from other modes of gaming, the number of eighteen is completed.

CULLU'CABHATTA.

LOANS have been discussed; sale without ownership shall be subsequently considered. What is ordained, is a "precept or rule" which must be fulfilled (1). Consequently the meaning of the phrase (I) is, "hear, that is, attend to, what is to be done in respect of bailments; namely the form of making a deposit, and so forth, unto the form of receiving it." NA'REDA defines a deposit.

III.

NA'REDA:—WHEN a man bails any of his effects to another, *in whom he has confidence, and from whom he has no doubt of receiving his property again, it is a deposit, which the wise call nihcshépa.*

"WHERE" is here employed in the sense of when; one suffix being substituted for another. Or else, "where" has the termination of the seventh case denoting subject; consequently that, in respect of which the agent, entertaining no doubts of receiving his property again, performs acts which make it a deposit, or an act amounting to bailment, is a deposit: or the settled rule concerning deposits is a title of judicial procedure.

Is the sense of the word grounded jointly on its use and derivation, or on its acceptation only? The latter is intimated by CULLU'CABHATTA who thus explains the word, 'the intrusting of one's own property to another person:' and the author of the *Mitácshará* says, 'nihcshépa is the committing of property

property to *another* in *his* presence * According to this opinion, it has a secondary sense, namely that of *the thing* deposited, in the expression "make a deposit *" (XI) for a derivitive of this form may be admitted in a passive sense When a man bails his own property, it is a bailment of his own property, or the property is a bailment According to the opinion, wherein it is maintained, that the word means the thing bailed, the sense is the same in both texts herein many authors concur Consequently *nikshépa* denotes generally both the delivery of a man's own effects to another without annulling his own property in them, and the effects so delivered.

"In whom he has confidence," is mentioned descriptively, and not as denoted by the term, for a man will not intrust his property to another without confidence in him "Any of his effects," any of the effects in his power therefore, when the king commits contested property to another person, it is a deposit

Does not the sense ascribed to *nikshépa* comprehend a pledge, or the delivery of a pledge? It may be so a deposit does arise in a pledge and the like. But, when it is questioned whether a deposit or a pledge shall prevail, deposit, different from a pledge, is intended, in like manner as one name of kine may denote cattle of that sort, and a synonymous term in the same sentence may intend cows only or the objection may be removed by saying "without contracting his own dominion over them," instead of saying, "without annulling his own property in them"

Upanid'hi is a distinct sort of deposit, of which Cullu'cabhatta says, it is a distinction similar to that of religious mendicant and *Brahmana* what the distinction is, Yajnyawalcya declares

IV

Yajnyawalcya'—A thing, enclosed *under seal* in a box or casket, which the owner delivers into the hand of another, without mentioning *its kind, form, or quantity*, is cal-

* Literally 'bail a deposit

led

led an *upanid'hi*, and muſt be reſtored in the ſame condition.

A BOX, caſket, or other thing containing that, which is to be bailed; a thing contained therein under ſeal, which the owner with confidence delivers into the hands of another for ſafe cuſtody, without mentioning its kind, form, quantity, or the like, is called an *upanid'hi*. The *Mitácſhará*.

" A BOX," or veſſel with a lid and ſo forth, containing the thing bailed. The *Retnácara*.

' THE thing bailed' ſignifies the thing which becomes a depoſit.

" THAT, which the owner ſo delivers :" ' thing' muſt be ſupplied as the ſubject, *to which the word* " *that*" *is joined adjectively*. " A box or caſket ;" a cloſed veſſel or the like containing the depoſit. The *Dípacalicá*.

THE word ' depoſit' is there conſidered as ſignifying the chattel bailed. BHAVADE'VA cites the *Sa'rja*,* ' A *certain* veſſel is called box or caſket.' " Such a depoſit is called *upanid'hi*;" *for* a bailment under ſeal is a depoſit. Open and ſealed depoſits are ſimilar, *being bailments*. So JATA'D'HARA. From *upanid'hi* is derived *aupanid'hica*, the word uſed in the text; and it ſignifies belonging to a ſealed depoſit.

V.

NA'REDA, cited in the *Mitácſhará*.—WHEN a thing is depoſited, under ſeal, without mentioning its quantity; if its kind and form be unknown, it is conſidered as an *upanid'hi:* but the wiſe call a ſpecified depoſit *nihcſhépa*.

" IF its kind and form be unknown ;" if the depoſitary know not whether it be gold, or ſilver, or what. " Under ſeal ;" ſecured by a private knot to pre-

* A dictionary ſo called.

vent its being taken by another perſon, or ſecured by the impreſſion of a ſeal on which particular letters are engraved; when a thing is ſo depoſited, the bailment of it is *upanid'hi*. A ſpecified depoſit (or the bailment of a thing, of which the quantity, kind and form are mentioned,) the wiſe call *nibcſhépa*; and the conſtruction is the ſame, if depoſit be referred to the thing depoſited.

SINCE the text of NA'REDA clearly ſhows a diſtinction between open and ſealed depoſits, the diſtinction ſhould be called evident: why does CULLU'CABHATTA compare this diſtinction to that between *Bráhmana* and mendicant? In the text of CA'TYA'YANA (XXXII), ſealed depoſit is comprehended in the word *nibcſhépa*; and NA'REDA, after premiſing the general ſenſe of this term, propounds a diſtinction in a ſubſequent text: conſequently it has both a general and a particular ſenſe, as twice-born denotes the *Bráhmana*, *Cſhatrya* and *Vaiſya* collectively, and alſo the *Bráhmana* ſeparately: and further, VRĬHASPATI premiſing *nibcſhépa* (1) explains *nyáſa* ſeparately from it, but not ſeparately from ſealed depoſits.

VI.

VRĬHASPATI:—WHEN any thing is carried and placed *in the houſe or on the ground of another, notice being given to him* by the owner, who has fear of the king or of robbers and the like, or who wiſhes to deceive his heirs, it is called *nyáſa*.

ACCORDING to the gloſs of CHANDE'SWARA. "Notice being given to him," is ſupplied in the text to exclude a thing depoſited without the depoſitary's knowledge: there is no fault on his part, if a thing, depoſited without his knowledge, be loſt. Why ſhould a man place any of his own effects on another's ground? The text aſſigns a motive, "fear of the king" &c.

IF it be ſaid, this is the meaning of *nyáſa*, not of *upanid'hi*; the anſwer is, in the verſe immediately following he mentions what is in fact denoted by the laſt mentioned term.

VII.

VRĬHASPATI:—*And when a thing*, encloſed in a box, *is placed* without

without mentioning its kind, form or quantity, and without ſhowing the thing.

" *Placed*" is brought forward from the preceding text: it follows, that this deſcribes *nyàſa*, for no other name is mentioned. Conſequently, *nyàſa*, like *nikeſhépa*, has both a general, and a particular ſenſe. So, in the text of MENU (XL), *nyàſa* comprehends both open and ſealed depoſits; and it is conſtantly uſed by VRĬHASPATI in deſcribing a depoſitary. According to the *Mitácſhará* and the reſt, *nyàſa* is the delivery of a thing into the hands of a perſon belonging to the depoſitary's family, with theſe directions; " give this *to your maſter*:" and ſuch a delivery occurs both in the caſe of open, and of ſealed depoſits; but VRĬHASPATI has expreſsly declared it in the caſe of open depoſits.

VIII.

CA'TYA'YANA :—A COMMODITY ſold, the depoſit of one who is abſent, a pledge, a bailment for delivery *(anwàhita)*, a loan for uſe *(yáchita)*, and a depoſit for commerce, are conſidered as *upanid'his*.

" A COMMODITY ſold," but for ſome cauſe remaining with the vender: ſo the text is expounded in the *Retnácara*. We hold, that the word, taken in a paſſive ſenſe, means the commodity *ſold*; but, if taken in a cauſal ſenſe, it will intend *the price* of the commodity. " The depoſit of one who is abſent;" explained in the *Retnácara*, a thing depoſited by one, who is gone to a foreign country. The meaning is, that a thing, which a man, who has gone abroad, but conſidering the delay of his return, ſends home by a meſſenger or a friend, is the depoſit of one who is abſent. MISRA and BHAVADE'VA explain it, a bailment by another, while the owner is abſent in a foreign country. The *Mitácſhará* contains this gloſs: ' When a thing is delivered into the hands of ſome perſon, and he ſubſequently delivers it into the hands of another, with theſe directions, " give this *to the owner*," it *is* a bailment for delivery.' The *Dípacalicá* concurs in this explanation: and CHANDE'SWARA holds, that a thing which had been committed to ſome perſon, and which is bailed by him to another, with theſe directions, " you will deliver this to ſuch a man,

man, the owner," is a bailment for delivery The difference between the two opinions consists in the intervention of one or two persons and the exposition is founded on the following text

IX

CA'TYA YANA —WHEN a thing is bailed with these directions; "deliver this, as by my desire, to such a man, when he shall demand it for his own business," it is called *anwadhi*.

WHAT is bailed with these directions, "deliver this to another, other than myself and different from the owner," is *anwadhi*.

The *Mitacshara* and others

"DELIVER this to the owner, must be supplied, what is bailed with these directions, deliver this to another, other than myself, *but who is* "the owner," is *anwadhi*. The *Retnacara*.

BOTH senses may be received, or even if the text be limited to one sense, the other may be assumed from the expression, "and the like," in the text of YA JNYAWALCYA (X) A pledge transferred, as mentioned by MISRA and BHAVADE VA, must also be included A pledge received from another person, and delivered as a pawn to a creditor on receiving a loan from him, is named a pledge transferred We do not find, whence the author of the *Mitacshara* has said, in explaining *nyasa*, that the difference consists in the delivery of the thing into the hands of a person belonging to the depositary s family for the difference is, that *nyasa* supposes one person, but a bailment for delivery supposes two

HOW has CHANDE SWARA distinguished *nyasa*, *nikcshepa*, and *anwahita*? It cannot be said, that he holds *nyasa* and *anwahita* to be the same. for that exposition could not apply to the text of YA JNYAWALCYA, where both are separately mentioned

X

YA'JNYAWALCYA.—THIS is the rule respecting a loan for use *(yachita)*,

(yáchita), a depoſit for delivery *(anwàhita)*, a depoſit unſpecified *(nyáſa)*, and an open bailment *(nihcſhépa)*, and the like.

" When he ſhall demand it for his own buſineſs" (IX) By this expreſſion is meant, that, if any perſon require a thing, and it be ſent by a meſſenger, it is *arwàhita*. Some hold, becauſe the word " owner' is conſtantly employed in the *Mitacſharà* and other works, that the diſtinction is as follows: effects and the like, previouſly depoſited, which are delivered to the owner, through the medium of another perſon, are *anwàhita*, and what is bailed by the owner, through the medium of another, is *nyaſa*. But the word " owner" is not found in the text of any ſage, to ground upon it the opinion of theſe authors. HELA YUDHA, reading " when he ſhall demand it for this purpoſe," thus expounds the text: ' when a thing is bailed with theſe directions, "deliver this to ſuch a man, when he ſhall demand it for this purpoſe," it is called a depoſit for delivery *(anwàdhi)*.' The meaning is, that, if ſome perſon, to oblige another, intruſt any chattel employed at nuptials to ſome other perſon, with theſe directions, " when DE'VADATTA requires this to uſe it at nuptials or the like, deliver it to him," that chattel is a depoſit for delivery *(anwadhi)*. Or, if a man himſelf, or by a meſſenger, demand payment of a debt, and the debtor, after two or three days, deliver the amount of it to ſome other perſon, it is a depoſit for delivery *(anwadhi)* According to CULLUCABHATTA and others, the word *anwádhi* is either in a ſecondary ſenſe, or is derived in a paſſive form. According to others, it is derived in a paſſive form, with a ſenſe founded jointly on uſe and derivation.

' CLOTHES, ornaments and the like requeſted, and obtained, for a marriage or other occaſion of rejoicing, are loans for uſe' (VIII).

THE *Mitácſharà*.

IN this CHANDE'SWARA and `SU'RAPA'NI concur. The *Dipacalicá expreſſes*, " they are conſidered as *upanid'hi*" (VIII), which is called *nyaſa* by VRI'HASPATI The meaning is, whatever are the rules in regard to a ſealed depoſit, from the delivery to the recovery of it, the ſame are to be admitted in theſe caſes. This is expreſsly declared in the text quoted

from YA'JNYAWALCYA (X): and it is directed by a text, which ſtands near the definition above quoted.

XI.

NA'REDA:—THIS very law is enacted in *the caſe of* loans for uſe, depoſits for delivery and the like, bailments with an artiſt, ſealed depoſits, bailments in the form called *nàyſa*, and mutual truſts.

2. IF a man privately receive a fine, or a valuable chattel, the law is the ſame in that caſe: theſe are declared to be the ſix ſorts of depoſit.

LOANS for uſe, and depoſits for delivery (*anwàhita*) have been explained. "And the like," comprehends commodities ſold and ſo forth. "Bailments with an artiſt" explained in the *Retnácara*, things committed to an artiſt for ornaments and the like; and in the *Mitácſharà*, gold or ſimilar *materials* delivered into the hands of a goldſmith or other artiſt to be worked into a neeklace or other *ornament*. Theſe are comprehended under the words, "and the like," in the text of YA'JNYAWALCYA (X). "Sealed depoſits," *(upanid'hi)*, already explained. "*Nyàſa*," according to VIJNYA'NE'SWARA and CHANDE'SWARA, ſignifies effects not ſhown to the owner of the houſe, but delivered in his abſence to a perſon belonging to the houſe. According to CHANDE'SWARA, the *nyàſa* mentioned by VRI'HASPATI is a form of *nihcſlépa*, and different from this. So many are the ſorts of depoſit *(nihcsbépa)*, ſays CHANDE'SWARA; for NA'REDA employs this term in a general ſenſe.

CHANDE'SWARA ſays, when a man privately receives a fine, as there is no evidence of his levying the fine, this very rule *is applicable*; and alſo when a man privately receives a valuable chattel, ſince there is no evidence of the receipt. Conſequently, if a man, to expiate a very infamous crime accidentally committed, pay a private fine to the king, through a publick officer, and that officer, acting fraudulently, deny the payment of the fine; or if the king's officer aſſert that a fine has been paid, though none have been exacted; this very rule is applicable, namely the rule declared for depoſits: and, if a man privately

privately receive back a loan, a depoſit, or the like, which he had himſelf given, and ſubſequently deny the receipt; in that caſe alſo, this very rule is applicable. It is aſked what rule? The want of evidence being mentioned, it follows, that other proof muſt be ſought: therefore, as ordeal is admitted, when proof is ſought of a depoſit and the like, ſo, in this caſe, *ordeal is* alſo *admitted*. Such is CHANDE'SWARA's meaning. But it muſt be here conſidered, that ordeal is not mentioned in the text of NA'REDA, and is not intimated by the words "this law." Others ſay; the words ("the law is the ſame *in the caſe* of fines &c.") intend the delivery on demand and ſo forth.

HELA'YUDHA reads, if a man receive a *pógenda* or adoleſcent; conſequently, according to him, the law, reſpecting an infant received with valuable effects, is the ſame with that reſpecting depoſits: it will be mentioned; and the whole of the law, declared under the head of depoſits, muſt be underſtood. A depoſit may occur in regard to an infant. Thus a child, whoſe father and mother are deceaſed, is bailed by the king, or his officer, or by the child's maternal uncle; in this, and in other caſes, a depoſit ariſes.

"How is the law of depoſit *(nihcſhépa) extended* by the ſage to mediate and unſpecified depoſits *(nyàſa)*, ſince what is denoted by *nihcſhépa*, is found in *nyàſa* and the reſt?* CHANDE'SWARA reconciles it thus; "ſome diſtinction may be ſuppoſed." The diſtinction is mentioned by CULLU'CABHATTA; "like that betweeen *Bráhmana* and mendicant." Or peculiarities, different from thoſe of *nyàſa* and the like, may be ſuppoſed in the definition of *nihcſhépa*: ſuch as, delivered before witneſſes; different from bailments with artiſts; or the like. There are only ſix ſorts of depoſits; for, in judicial procedure, *nyàſa* extends to the mere delivery of a chattel for ſafe cuſtody; and loans for uſe and depoſits for delivery are held one ſort; and whatever is included in the words "and the like," is alſo conſidered as a ſingle ſort of depoſit; and the receipt of a fine, or of a valuable chattel, is alſo admitted as a ſingle ſort of bailment. This is the method of the ancients: but according to the author of the *Mitácſharà*, who admits the ſeparatioo of loans for

* *And therefore, what in its nature belongs to them, is not extended to them.*

uſe,

uſe, depoſits for delivery and the like, a mediate and unſpecified depoſit *(nyàſa)* and mutual truſts *(pratinyàſa)* muſt be conſidered as a ſingle ſort of bailment. A mutual truſt may thus ariſe, according to the author of the *Mitácſharà;* "let your jewels or the like remain with me, who reſide in a ſecure place; and let my copper veſſels and ſimilar effects, which are coveted by my heirs, remain with you;" on ſuch an agreement, the effects are mutually bailed. In ſome caſes, mutual depoſits are made in the form of a ſealed bailment; and in the caſe mentioned, a mutual depoſit ariſes in the form of an open bailment, not a mutual depoſit in the form of a mediate bailment *(nyàſa):* for the author of the *Mitácſharà* holds *nyàſa* to be a delivery into the hand of a perſon belonging to the houſe. But there is no difficulty, for the word *pratinyàſa* comprehends mutual depoſits in other forms.

XII.

VRĬHASPATI:—IF a conteſt ariſe concerning a depoſit privately made, proof by ordeal is directed for both parties:

2. In the caſe of a depoſit for delivery, a loan for uſe, a bailment with an artiſt, and a pledge, the ſame law is enacted; and likewiſe, in the caſe of a perſon received under protection.

IF the depoſitary do not acknowledge a depoſit privately received; or the bailor, having received back what he had himſelf depoſited, deny the receipt: or if he allege a depoſit, though none have been made; in all theſe caſes, ordeal is directed, if there be no evidence: this will be explained in its place. CHANDĔSWARA ſays; if a conteſt ariſe concerning a woman, a ſlave and the like, who, from fear or other motive, have ſought protection, and are claimed by their lord, the ſame law is enacted. The meaning is, that, in this caſe alſo, proof by ordeal is directed.

HERE all the rules, declared in regard to a private depoſit, are to be applied to each caſe, from depoſits for delivery, to perſons received under protection. Therefore, a depoſitary protects what he has received in truſt, like his own property, from water, fire, thieves and other danger; and likewiſe,

in

in the case of a person received under protection. Wherever the property of one person is, for some cause, delivered into the hands of another for safe custody, the rules, declared in regard to deposits, are to be applied: therefore, the law of bailments applies to a carriage and the like received on hire; and so, in the case of a person delivered by the king or the like into the hands of a guardian, or the produce of a field bailed for safe custody by a subject. What is the law in respect of bailments, which is extended to loans for use and the like? It is answered, all the rules, propounded by sages, from the delivery to the recovery of a deposit, must be understood.

XIII.

MENU:—A SENSIBLE man should make a deposit with some person of high birth, and of good morals, well acquainted with law, habitually veracious, having a large family, wealthy and honest.

"OF high birth;" sprung from an honest family. "Of good morals," whose conduct is laudable. "Habitually veracious;" in his discourse observant of truth. "Having a large family;" having sons, grandsons, or other family to support. "Honest;" plain in his dealings, void of artifice, and so forth. With such a person should he make a deposit. Such is the interpretation approved by CULLU'CABHATTA.

"HAVING a large family" is explained in the *Vivada Chintameni*, having many kinsmen. In the *Retnacara*, "a deposit" is expounded the thing to be bailed. "High birth" and the rest are conditions required to obviate all doubt of receiving back the deposit at a subsequent time: for, since the abuse of a deposit is a heinous crime, a person sprung from a good family will not abuse it; much less a person of good morals and well acquainted with law. A man habitually veracious will not assert a falsehood. Why should a wealthy man, content with his own wealth, commit a heinous crime, by embezzling another's property? An honest man cannot commit a fraud. One, who has numerous offspring, even though he believe not another world, will not embezzle the property, lest his offspring

periſh. Or it may be thus explained; he, who has no offspring, being unaided, cannot well protect the depoſit. This agrees with the expoſition of MISRA and others. The deſcription is general, including exemption from other defects. The whole of it muſt be taken as a motive for confidence. So NA'REDA *ſays* (III), "when a man bails any of his effects to another, in whom he has confidence, &c." In this text (XIII) depoſit is uſed in a general ſenſe, comprehending bailments under ſeal and the reſt.

XIV.

VRI'HASPATI:—A MAN ſhould make a depoſit, with due conſideration of the place, of the houſe, of the maſter of the houſe, and of his power, wealth, qualities, veracity, purity and kindred.

"THE place," which contains the thing depoſited; with due conſideration, whether it be ſecure from robbers and the like. Or "the place" may intend the town: conſidering the ſafety of a populous place, where the property is protected by many. "Houſe" or wife (for the word has both ſenſes); conſidering whether the wife be virtuous, left, at her ſuggeſtion, the effects be ſecreted; for a man, though virtuouſly diſpoſed, may be inſtigated, through luſt, to ſecrete the effects. Or conſidering whether the "houſe" be built of maſonry and ſecure from fire. "His power;" is the depoſitary capable of protecting the effects? "His qualities;" his honeſty, his acquaintance with the law and the like. "His purity;" his avoiding ſin and ſo forth. "His kindred;" his ſons, grandſons and the reſt.

XV.

NA'REDA:—A DEPOSIT is declared to be of two ſorts, atteſted and unatteſted; it muſt be reſtored in the condition *and manner*, in which it was bailed; if altered, there muſt be a trial by ordeal.

An unatteſted depoſit is made, when a man has the higheſt confidence in another. If it be aſked, why a ſimilar diſtinction of loans has not been mentioned;

mentioned; it is answered, that from the nature of a loan, it must either be authenticated by witnesses or by a writing: for excessive confidence is forbidden.

A rule of Ethicks:—PLACE not confidence in what is unworthy of confidence; nor excessive confidence in what is *even* worthy of confidence.*

THE purpose of a deposit made to deceive heirs (VI) would be defeated, if it were publickly known. The selection of a proper person for the confidence reposed in him, at the choice of the owner, must necessarily be admitted, in contradiction to that rule of ethicks, to fulfil the purpose of a deposit: but in the case of a loan, the selection, at the lender's choice, of a suitable person for the confidence reposed, is not proper; *the rule is positive*, like the prohibition against lending to infants. Therefore a loan unattested is not mentioned: and, in fact, such is the present practice.

A DEPOSIT must be restored in the condition *and manner*, in which it was bailed (XV). Thus, if it be bailed under a seal, it must be restored under that seal; if it be bailed before witnesses, it must be restored before witnesses; if it be privately bailed, it must be privately restored: so likewise, if it be bailed without a seal or unattested. Again; if more than one make or receive a deposit, they shall jointly recover or restore it: and similarly, in other circumstances. The same meaning is to be understood from the text of YA'JNYAWALCYA (V), and from the following text.

XVI.

MENU:—WHATEVER thing, and in whatever manner, a person shall deposit in the hands of another, the same thing, and in the same manner, ought to be received back by the owner: as the delivery *was*, so *must be* the receipt.

As it may be questioned, whether the latter part be not superfluous, since it repeats what preceded, CULLU'CABHATTA says, 'it is mentioned as a cause:

* Cited from the *Herivansa*. See Book I, towards the end of the first Chapter, p. 274.

' cause: because it is a rule, that, as the delivery was, so must be the re-
' ceipt, therefore the same thing ought to be received back, in the same
' manner. This directs, that, if gold and the like have been bailed under a
' seal, and the bailor, breaking the seal, say, "weigh it, and deliver it to
' me," he shall be amerced.' We do not find, how it appears, that he shall be amerced. If the bailor require it to be weighed, the king should compel him to receive it unweighed: and this is the purport of the text.

HERE lawyers, unfettered by ordinances, say, two terms ("*from him*, and by him") must be supplied: consequently the sense of the first part of the text would be, whatever thing (gold or the like), and in whatever manner, a person shall deposit in the hands of another, the same thing, and in the same manner, ought to be received hy him, the depositary, from him, the bailor. The word delivery is in a passive form; as *the thing was* delivered, so *it must be* received *by the bailee*: and, if there be a subsequent contest respecting the quantity, and the king ask, "why did you receive it unseen, or unattested?" then the first part of the text furnishes an answer: "it was *so* received under the authority of the law." The intention of the latter part of the text is evident.

MENU clearly declares the form of a mutual deposit.

XVII.

MENU: — BUT things, mutually deposited, should be mutually restored by and to the person, by and from whom they were received: as the bailment *was*, so *should be* the delivery.

DE'VADATTA intrusts a thing to YAJNYADATTA; and YAJNYADATTA intrusts a thing to DE'VADATTA: having been mutually received, the things should be mutually restored. One cannot alone receive his own property, *merely* because he delivered his own property. "As the bailment was, so should be the receipt:" a deposit, received with or without attestation, should be so restored. If one say, "let my chattel remain with thee," and the other also say, "let my chattel remain with thee," it is a mutual delivery:

if

if one ſay, " let thy chattel remain with me, and my chattel with thee," it is a mutual receipt and delivery: and, if ſome perſon, ſeeing that another is unable to protect his property from robbers, and intending to confer a favour, ſay, " let thy chattel remain with me;" and if he, deſirous of returning the favour, ſay, " thou haſt many chattels of ſmall value, let them remain with me," it is a mutual receipt. Or the diſtinction between mutual receipt and mutual delivery may be explained in any other manner. Thus ſome expound the text; but CULLU'CABHATTA explains it by a depoſit privately made: " a thing privately depoſited" &c. A delivery mutually atteſted, that is, not atteſted by others. " By whom it was received;" privately received by the depoſitary. " Mutually reſtored;" privately reſtored *to the bailor*: to reſtore it before witneſſes ſhould not be required. " As the bailment was, ſo ſhould be the delivery," is mentioned as the reaſon. " Should be reſtored;" this rule regards the depoſitary; "ought to be received" &c. (XVI) regards the bailor: conſequently there is no *vain* repetition.

XVIII.

VRĬHASPATI, quoted in the *Retnácara:* — THE very thing bailed muſt be reſtored to the very man, who bailed it, in the very manner, in which it was bailed: it muſt not be delivered to his heir apparent or preſumptive.

IF bailed before witneſſes, it muſt be reſtored before witneſſes; and without exceeding the period for which it was bailed, if a period were ſtipulated: and, in the caſe of mutual depoſits, the receipt muſt be mutual. The *Retnácara* interprets " his heir" &c. his ſon and the reſt.

XIX.

VRĬHASPATI: — A DEPOSIT is declared to be of two ſorts, bailed before witneſſes and privately bailed; it muſt be preſerved as *carefully as* a ſon *is cheriſhed; for* it would be loſt by neglect.

2. THE merit of one who preſerves a depoſit, or protects a

dependant (*), is the same with the merit of him, who gives golden vessels or clothes.

3. As the crime of a woman, who injures her husband, or of a man, who kills his son or his friend, such is the crime of depositaries, if the thing deposited be consumed, or spoiled by gross negligence.

4. A *prudent* man would not receive a deposit; but to destroy it, when received, is infamous; he must keep it with care, and restore it on a single demand.

For a written contract of bailment there is no authority in the law, nor in judicial practice: but doubts may be now obviated by making such a contract. A deposit *must be preserved* from robbers, from vermin, from decay and the like: if no care be taken, and the thing be never inspected, it may decay in the ground; or be stolen by neighbouring thieves entering the house; or, if it be small, it may be carried away by rats; in these and similar modes, it may be destroyed. Why should a man labour to preserve another's property? The text furnishes a motive (XIX 2). But he, who is not desirous of religious merit, will not preserve it: therefore it directs (XIX 3), that the sinful taint of a husband's murder, and similar crimes, is contracted by alienating a deposit without permission, and by neglecting to preserve it. The preservation of it is indispensable; therefore, a deposit should not be received by a person, who is not disposed to an act of duty or amity.

Here it must be noticed, that, when the property of another is bailed by slaves, strangers, or robbers, to deceive the owner, that deposit ought not to be received: for usage *forbids it*; and the depositary might be suspected of theft, should he be unable to show, that the bailor actually made him receive the deposit. If, among undivided brethren, one parcener deposit joint property with some other person to deceive his coheirs, the depositary is censured.

(*) Or a person received under protection (XII).

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" A MAN ſhould not receive a depoſit " (XX 4), becauſe it is a crime in the depoſitary, if the depoſit be conſumed. " But to deſtroy it is infamous :" the particle may be taken in a connective ſenſe; and the meaning will be, the conſumption and the deſtruction of a depoſit are infamous. " He muſt reſtore it on a ſingle demand," if no period have been ſtipulated; but at the expiration of the period, if it were bailed for a ſtipulated time; or the bailor may receive it back ſooner, with the depoſitary's conſent.

XX.

MENU :—A DEPOSIT, whether ſealed up or not, ſhould never be redelivered, while the depoſitor is alive, to his heir apparent or preſumptive: both ſorts of depoſits are loſt if he die; but not, unleſs he die.*

'THEY ſhould not be redelivered to the ſon, the brother or other 'perſon, who would be entitled to them after the bailor. To aſſign 'a reaſon, it is ſaid, " both are loſt &c." that is, becauſe both are 'loſt, if they are delivered to a ſon or other heir, and he dies without deli-'vering them to the owner. It follows, that *in ſuch a caſe* they ſhall be 'made good by the depoſitary. But they are not loſt, unleſs he die: they 'will be delivered by the ſon or other heir to the depoſitor; they are not 'to be made good by the depoſitary. Conſequently, if they be delivered 'to the heir, there is danger that the heir may die, and that the depoſit 'muſt be made good; therefore, neither ſort of depoſit ſhould ever be re-'delivered to the heir.'

CULLU'CABHATTA.

HE ſuppoſes this caſe; the heir dies after receiving back the depoſit, and long afterwards the owner ſays, " the depoſit was not delivered to my heir, but remains with you, give it me." It cannot be ſaid, that, ſince the ſame may occur in the caſe of a debt, the delivery to a ſon and the like is

* The latter part of the text has been otherwiſe tranſlated by Sir WILLIAM JONES, " both ſorts of depoſits, indeed, are extinct, *or cannot be demanded by the heir*, if the depoſitor die, *in that caſe*; but not, unleſs he die, *for, ſhould the heir apparent keep them, the dep ſitor himſelf may ſee the to be let.*" I alter the tranſlation in conformity with the commentary.

improper

improper even in that cafe; and therefore the text, which directs payment to one of the family in default of the lender, is unmeaning. In that cafe, the delivery may be afcertained by atteftation. It cannot be faid, that here alfo it may be fo afcertained; for the atteſted recovery of an unatteſted depofit is forbidden (XVII): and, even in the cafe of fuch redelivery of an atteſted depofit, the depofitor's claim remains. Thus *the owner might fay*, "on what conſideration did you relinquiſh the depofit in my abſence:" but, in the cafe of a debt, the creditor cannot fay fo. The text is not unmeaning, for there is a purpofe in making the payment; namely the recovery of a pledge when intereſt has ceaſed; but, in the cafe of a loan unſecured by a pledge, upon which the higheſt intereſt has been received, the debtor may not repay it to the fon or the like. In fact, there is no offence in repaying it to the fon or other repreſentative, on the conſideration, that body is not immortal, and to remove the ſin of debt; for the debtor incurred the debt under the preſſure of indigence. But, under the authority of the text, a depoſit, voluntarily received, muſt be kept until the depoſitor return.

AGAIN, this ſhould now be remarked: we perceive no offence in redelivering a depoſit to the heirs of the depoſitor, before witneſſes, under the apprehenſion of ill treatment from thoſe heirs, *even* before the expiration of the period for which it was depoſited.

IF a ſon or other repreſentative ſhould die after receiving back the depoſit while the depoſitor was alive, and it have not reached the depoſitor, having been expended by the heir; and this be proved by witneſſes and the like; muſt the depoſitary make good the depoſit or not? To this it is anſwered, that, according to CULLU'CABHATTA, it ſhall not be made good: for he ſays, both ſorts of depoſits ſhall not be made good, if there be no doubt: and even ſometimes, though the heir be not dead, they are not loſt. Thus, if the heir be living, the depoſitary is juſtified by proof of the delivery to the heir: this is clearly expreſſed. What difference is there, if the heir be dead? After the death of the heir there may be ſuſpicion, if proof be deficient. It ſhould be remarked on the term "heir apparent or preſumptive" (*pratyanantara* v. XX), that the word *prati* denotes ſimilarity, as in the example "ABHIMANYU like ARJUNA." The word *anantara* ſignifies proximate without an interval.

Conſequently

Consequently a deposit can be legally received back by the nearest heir alone.

But CHANDE'SWARA, without employing the word 'even' says; sometimes the depositor shall recover it, though the heir be not dead: it follows, that sometimes the deposit is extinct, though the heir be not dead; that is, when the heir dissipates it without permission. Consequently, even in that case, it must necessarily be made good by the depositary. Otherwise, the expression, "but not, unless he die," would be unmeaning. In such a case it must certainly be made good. This is CHANDE'SWARA's meaning, and is proper; for, a son having no dominion over the paternal wealth while the father lives, his receipt of the thing deposited is not valid; as is declared by HA'RI'TA (Book V, v. VIII). Thus the son's receipt of it is similar to a stranger's receipt. But when it is any how received by the owner, the delivery becomes valid. Consequently, if it any how fail of reaching the owner, it must be made good. But, if the son conduct all the affairs while the father lives, there is no offence in a redelivery to him. However, a deposit, expressly bailed to deceive a son, must on no account be delivered to that son; while the father lives, without his directions: but, with his permission, there is no offence in redelivering the deposit to the son: and, after the death of the depositor, there is no harm in the redelivery of it to the heir.

XXI.

MENU:—BUT, if a depositary by his own free act shall deliver a deposit to the heir of a deceased bailor, he must not be harassed either by the king, or by the kinsmen *of the deceased.*

THE expression, "by his own free act," implies, that while the bailor lives, it shall not be delivered, though demanded by the heir: but after the bailor's death, it should be delivered, even without a demand.

CHANDE'SWARA.

HE must not be harassed by the king, on the ground of its being the bailor's property.

CULLU'CABHATTA.

"By the kinſmen" of the bailor: by his father's ſiſter's ſons, his mother's ſiſter's ſons, and the reſt. The meaning is, that after the bailor's death his ſons, or other heirs, have dominion over the effects depoſited: and if a ſon be living, it muſt not be delivered to a grandſon, whoſe father is alive.

If a depoſit, though carefully kept, be taken away by thieves or the like, there is no fault in the depoſitary.

XXII.

NA'REDA:—What is loſt together with the property of the bailee, is loſt to the bailor; ſo, if it be loſt by the act of God or of the king, unleſs there was a fraudulent act on the part of the depoſitary.

"Lost together with the property of the bailee;" meaning *generally*, if there be no fraudulent act on the part of the depoſitary. Thus, if the depoſit only be loſt, and not even a trifle belongiog to the depoſitary, yet, if it were kept with care, and conſumed by time only, there is no fault in him. If it be loſt by the act of God (broken by a wall falling down), or be loſt by the act of the king (plundered by the forces of a foreign king; or oppreſſively ſold, or the like, by the king of the country;) then, as in the caſe of conſumption by time, there is no fault in the depoſitary. But he is criminal, if fraudulently he place the thing depoſited near an old wall or the like, while he places his own property elſewhere; or if, concealing his own property, he ſhow the depoſit to the king. The principle of this rule is, that the depoſitary muſt make good the depoſit if he be in fault; and not, unleſs he be in fault. But, if the depoſitary ſay, it is loſt, though it be not loſt; then, on failure of evidence, it ſhall be tried by ordeal.

XXIII.

VRIHASPATI:—If it be deſtroyed by the act of God or of the king, together with the goods of the bailee, there is no fault in him.

"Together with the goods of the bailee;" to denote, that there is no fraudulent

dulent act on the part of the depositary. It is to be remembered, that, if he deliver the deposit to the king together with his own goods, without mentioning that it belongs to another, even in that case the depositary is criminal: and if it were kept with care, then, even though the deposit alone be seized by thieves or the like, there is no fault in the depositary. Herein the *Retnácara* and the rest concur.

XXIV.

CA'TYA'YANA:—IF a thing deposited be lost together with the goods of the bailee, though not by the act of GOD or the king, it is declared to be lost to the bailor.

THE loss of the bailee's goods, every where mentioned, is intended as a *general* exception to all fault in the bailee. It is therefore inferred, that, even if the deposit alone be lost, but without any fault in the depositary, it shall not be made good; but if lost by a fraudulent act on the part of the depositary, it must be made good.

THE *Retnácara*.

XXV.

YA'JNYAWALCYA:—BUT he shall not be compelled to replace that *deposit* lost by the act of GOD or the king, or seized by robbers.

HE shall not be compelled to make good a sealed deposit, lost with the vessel in which it was contained (being seized by the king, or washed away by water or the like, or stolen by thieves;) if there be no fraudulent act on his part.

THE *Mitácshará*.

A SIMILAR exposition is delivered by SU'LAPA'NI, who reads the text *daivata*, instead of *daivica (but the sense is unchanged)*. If it be lost by a fraudulent act on the part of the depositary, or by his fault, he shall be compelled to make good the deposit, and shall be amerced. This will be declared. A distinction is mentioned in the following text.

XXVI.

XXVI.

MENU:—IF a depoſit be ſeized by thieves, *or deſtroyed by vermin*, or waſhed away by water, or conſumed by fire, the bailee ſhall not be compelled to make it good, unleſs he took part of it himſelf.

IF a perſon, receiving a depoſit, conſume a part of it, and afterwards the remainder be ſeized by thieves or the like, ſome hold, that, under the authority of the text, the depoſitary ſhall in that caſe make good the whole depoſit. But others ſay, that the depoſitary ſhall make good the whole, if he accidentally receive any part of the depoſit, which has been ſeized by thieves, or the like. This is denied, becauſe *it is not fit, that the* loſs ſhould be his, without any fault in him: but if he do not make it known, that he has received the thing, he is criminal, and ſhall make good the depoſit, as in the preceding caſe Since he is criminal, if he conſume any part of it, whether before or after it was ſeized by thieves or the like, he ſhall make good the whole depoſit This is the *full* meaning of the text. In that caſe he ſhall make it good with intereſt, if he conſume a part of the depoſit, but without intereſt, if he merely omit to make it known, that he has received a part of it.

IF he take a part of it, and depoſit the remainder elſewhere; or neglect it, thinking that he will not be liable to make good the whole, in that caſe, the whole muſt be made good.

MISRA.

WHEN the depoſit is loſt by the depoſitary's fault, he ſhall make it good; but when it is loſt by the fault of the perſon, through whom it was depoſited, then this perſon ſhall make it good.

XXVII.

CA'TYA'YANA:—WHAT is loſt by the fault of the depoſitary, is loſt to him.

2. HE, by whoſe fault any thing is loſt or taken away, ſhall be

be compelled to make it good with intereſt, unleſs *it be loſt* by the act of GOD or the king.

BUT, even if the depoſitary have ſhown *a probable* cauſe of its deſtruction, if the thing depoſited appear to have been loſt by any fault on his part, other than neglect, he ſhall make it good.

The *Retnácara.*

A MAN, addreſſing ſome perſon, ſays, "let my property remain in depoſit with thee;" he replies, "my houſe is infeſted by rats and other vermin, place it not there;" the other rejoins, "be it ſo, what can vermin do?" and he, accordingly, depoſits the goods. It follows, that in that caſe there is no fault in the depoſitary, if it be loſt by neglect. But if he place it out of the houſe, or in another place, and in conſequence it be ſeized by thieves, or ſpoiled by rain; or if, from anger or ſome other motive, he caſt it of his own accord into the water; or if he deliver it to the king, who cauſes his houſehold effects to be ſold on account of ſome fault; if the thing depoſited be loſt by theſe, or other faults on the part of the depoſitary, he ſhall make it good. This is intended by the firſt hemiſtich (XXVII).

WHEN, addreſſing ſome perſon, a man ſays, "bail this grain to DE'VADATTA;" and he, going to DE'VADATTA, ſays, "this grain is bailed to thee, by CHAITRA, through me;" and DE'VADATTA anſwers, "place it in the houſe;" and he places the grain in the middle of the houſe, but in a damp ſpot; and the grain is deſtroyed by the damp: in this caſe, the grain ſhall be recovered from the meſſenger. This is intended by the ſecond verſe (XXII 2): for, otherwiſe, it would be ſuperfluous. Thus, if the depoſitary be underſtood in the words, "he, by whoſe fault," the ſenſe is the ſame as in the preceding hemiſtich; and if the depoſitor be underſtood, then the receiver and giver would be the ſame; it is therefore properly applied to an intermediate perſon: and, according to the *Dipacalicá* when the depoſit is deſtroyed by the fault of the perſon who cauſes it to be placed, he ſhall make it good. But when the owner bails effects notwithſtanding the depoſitary's objections, and thoſe effects, being neglected,

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are loſt, but without any other fault on the part of the depoſitary, in that caſe no blame ſhall be imputed to the depoſitary.

XXVIII.

CA'TYA'YANA:—If the depoſitor, though apprized of its danger, *nevertheleſs* bail the thing, and it be deſtroyed by any injury, the depoſitary ſhall not be compelled to make it good.

If the depoſitor know the loſs of his effects to be probable (having been forewarned by the depoſitary, that the king would force the houſe, and therefore he ought not to place his effects there); if he nevertheleſs bail thoſe effects, there is no fault in the depoſitary, ſhould they be loſt by any cauſe, whether it be the occurrence which was previouſly apprehended, or *ſome accident* which was not apprehended. In this expoſition, the *Retnacara* and the reſt concur.

Is this text applicable or not, when, in ſuch a caſe, the depoſit is loſt by negligence? Here it is ſaid, that the text does apply in the caſe of a loſs occaſioned *merely* by negligence, without any other fault: for another text (XXIV) *already* ſhows, that there is no fault in the bailee, if the depoſit be loſt without neglect or other *fault*, and it is declared, that the depoſitary is criminal, if it be loſt by his fault. It cannot be ſaid, that the former text (XXIV) intends the caſe of a depoſit loſt together with the goods of the bailee, but that this text (XXVIII) intends a depoſit conſumed by time, though not neglected, and without a concurrent loſs of the bailee's own effects. For, according to CHANDE'SWARA, *it is* not limited to the caſe of the bailee's goods being loſt with the depoſit; 'the loſs of his goods, every where mentioned, *is* intended as an exception to other faults alſo,' and the text (XXIV) is taken only in the ſenſe *ſo* inferred: this correſponds with what CHANDE'SWARA has ſaid in explaining another text (XXVII)

XXIX.

GO'TAMA:—THE neceſſity of making good a depoſit, a thing bailed for delivery to a third perſon, a pledge, a thing borrowed

borrowed or hired and the like, if deſtroyed by the fault of the bailee, ſhall not fall upon any of his heirs, if they were free from blame: but it falls on the bailee, by whoſe fault the thing is deſtroyed.

"Depoſit" &c. in a general ſenſe. Whatever has been mentioned by any ſage or author, as partaking of the nature of a depoſit, muſt be underſtood. "Heirs;" ſons, grandſons and the reſt. "Free from blame;" not in fault. Conſequently, ſhould the depoſitary die, the owner recovers the thing depoſited from the heirs of the bailee, *if it be loſt by their fault:* thus is the law ſettled. But, if it be loſt without any fault, by accident or the like, he does not recover it from the heirs. This expoſition is founded on the gloſs of the *Retnácara*.

Is not this gloſs ("heirs:" ſons, grandſons and the reſt) unmeaning; for the depoſitary himſelf is free from blame, if the depoſit be loſt without any fault on his part? It muſt be underſtood, that this text is intended to obviate the doubt, whether, in caſe of the depoſitary dying after having occaſioned the loſs of the depoſit by his own fault, the owner may recover it from his ſons, becauſe it was loſt by their father's fault: but if it be loſt by their fault, it muſt be made good by them (XXVII 2).

SECTION

SECTION II.

ON THE RECOVERY OF A DEPOSIT.

IT has been said, that *the depositary* shall be compelled to make good *a deposit destroyed by his fault*; shall he be compelled to make it good with, or without, interest?

XXX.

VYA'SA:—FOR a thing voluntarily wasted, the bailee shall be forced to pay the price with interest; for a thing neglected, the value only; for a thing lost through *slight* inattention, something less.

WHEN the owner, having bailed a thing, demands it at a distant time, and the depositary, having wasted it, cannot deliver it; then, a contest arising thereon, if it be proved that he has wasted the thing, he shall be compelled to make it good with interest. "Wasted" is not exclusively intended; but any advantage, which the depositary procures for himself *by the thing bailed*, is fully meant; hence the sale and other embezzlement of the thing deposited is comprehended in this precept.

XXXI.

VRĬHASPATI:—WHATEVER depositary procures advantage for himself by the thing bailed, *without the consent of the owner*, shall be amerced by the king, and made to pay the price of that thing with interest.

HERE also "without *the* consent *of the owner*" is determinately meant. Having procured advantage to himself by the thing bailed, without the consent of the owner, if he make it good in another mode, he may be exempted

ed from the payment of intereſt, and from the fine, by the forbearance of the owner, and of the king.

The *Retnácara*.

THE commentator's meaning is, that, even if the thing bailed be waſted, the payment of intereſt and of a fine is not cuſtomary; but the value of the chattel only muſt be made good. Otherwiſe this text would be trivial, *becauſe the puniſhment of an offender is a matter of courſe*.

THE preceding text (XXX), attributed in the *Mitácſhará* to CA'TYA'YANA, is aſcribed to VYA'SA by CHANDE'SWARA, MISRA, BHAVADE'VA and others. The intereſt, according to MISRA, ſhall be the eightieth part *of the principal by the month*, as ordained by the law.

XXXII.

CA'TYA'YANA:—A DEPOSIT, the balance of intereſt, a commodity ſold, and the price of a commodity purchaſed, not being paid after demand, ſhall bear intereſt at the rate of five in the hundred.

"IF the debtor be a *Súdra*" *muſt be ſupplied*, to reconcile it with the text, which directs intereſt at the rates of two and three in the hundred and ſo forth (Book I, v. XXIX 2).

IT is directed, that a thing voluntarily waſted ſhall bear intereſt: does intereſt commence from the day when the thing was depoſited, from the day when it was waſted, or from the day when it was demanded? 1. To this it is anſwered, it ſhall bear intereſt after ſix months from the date of the depoſit: for, the words "after three ſeaſons" being repeated in this text (XXXII) from the preceding text (*Book* 1, v. LVI 1), it is proper to aſſume the date of the depoſit, in anſwer to the queſtion, from what date ſhall three ſeaſons be counted? 2. Some hold, that a depoſit, not delivered on demand, *ſhall* bear intereſt ſix months afterwards, becauſe demand is ſuggeſted by the context where MISRA directs intereſt at the rate of five *panas* in the hundred after ſix months. 3. Since the waſting of the thing depoſited is the cauſe of its

 bearing

bearing intereſt, under the authority of the text (XXX), we hold it proper, that intereſt ſhould commence (even earlier than ſix months,) from the day when the thing was waſted, but the other text (XXXII), ordaining intereſt after ſix months, is applicable to the caſe, where a fraudulent depoſitary, though the thing have not been waſted, refuſes to deliver it on demand, like the price of a commodity purchaſed, and like a balance of intereſt, and ſo forth. What then ſhall be the rate of intereſt? Two in the hundred, and other rates ordained by the law; becauſe thoſe are in their nature legal rates, and becauſe intereſt is ſo limited by the text of MENU (Book I, v. XLII): and the intereſt and amercement ſhould be proportioned to the magnitude of the offence. But this does not coincide with the opinion of the author of the *Mitacſharâ*, for he applies the text (XXXII) to a thing voluntarily waſted, and does not diſtinguiſh *payment of* intereſt and exemption from intereſt, in caſes where a thing depoſited is loſt by neglect, and ſo forth.

THE text of VYA'SA (XXX), being placed under the head of depoſits damaged, relates to ſuch as are damaged by the uſe of them. Conſequently, if a ſtone or the like, bailed without ſeal, be uſed for three or four days, it ſhall not be reſtored with intereſt the payment of intereſt regards things damaged by the uſe of them

XXXIII

YA'JNYAWALCYA:—IF the depoſitary, of his own accord, *without the conſent of the owner*, uſe the thing depoſited, he ſhall be amerced, and compelled to pay the price of the thing with intereſt.

"OF his own accord," that is, without the aſſent of the owner. "Uſe the thing depoſited;" employ it for his own purpoſes. Such a depoſitary ſhall be amerced. The fine not being ſpecified, he ſhall be amerced in the value of the thing, like the depoſitary, who does not deliver the thing on demand; and he ſhall be compelled to pay the price of the thing with intereſt.

"FOR a thing neglected, the value only" (XXX), the depoſitary ſhall be compelled to pay the value only of a thing neglected, that is, of a thing loſt

by his negligence, such as disregard of it, because it was another's property: in this case, interest shall not be exacted. It must be remembered, that, according to the third opinion abovementioned, if it be not delivered on demand, it shall bear interest after six months; but the value only shall be required, if it be made good immediately after the demand.

XXXIV.

VRĬHASPATI:—SHOULD the bailee suffer the thing bailed to be destroyed by his negligence, while he keeps his own goods with very different care, or should he refuse to restore it on demand, he shall be compelled to pay *the value of* it with interest.

"BY his negligence, while he keeps his own goods with very different care;" by neglect, after separating the thing bailed from his own effects. If the depositary, fraudulently removing the thing deposited, which was placed with his own goods, secure his own effects, but neglect the deposit; and the thing, being guarded by no one, but left any where unheeded, be consequently lost; in that case he shall pay interest by way of fine in like manner as if it had been wasted: for the removal of that thing was a great offence. In this case, the payment of an equal fine to the king is proper; but it is not mentioned by any sage.

"OR should he refuse to restore it on demand;" should he refuse or evade restoring the deposit, without making it known, that the thing has been lost by neglect; (for example, if he say, "am I thy servant, that thou shouldst deposit thy effects with me? I know not where thy goods were placed, nor by whom, nor what is become of them;" or, "that thing was not bailed, but given to me;") in this case, it shall be made good with interest: for his fault is great, in not making it known, that the thing bailed has been lost. According to the third opinion, interest must be paid from the day the thing was lost; in other instances, according to the nature of each case, interest commences after six months *and so forth*. Thus some lawyers reconcile it to the law, which directs the value *only* to be made good, if the thing bailed be not restored on demand. Others hold, that, if the thing deposited be not restored

reſtored on demand, it ſhall be made good to the owner with intereſt, and a fine be paid to the king equal to the value of that thing: thus eſtabliſhing by implication the conſiſtency of all the texts with each other. Some reconcile them by directing the value to be made good with or without intereſt, according to the qualities of the depoſitary.

The Mitácſharâ explains "ſomething leſs" (XXX) a fourth leſs. The meaning is, that, if the thing be inadvertently loſt, (having been neglected through forgetfulneſs, long after it was received in depoſit,) the fault being ſmall, three fourths only of its value ſhall be made good.

XXXV.

YA'JNYAWALCYA:—IF a *ſealed depoſit* be loſt, *even by the act of* GOD *or the king*, after it has been demanded and not reſtored, *the bailee* ſhall be compelled to pay the value of the thing, and an equal amercement.

IF it have been demanded (required by the bailor) and not reſtored by the bailee; ſhould a loſs of the depoſit afterwards happen by the act of GOD or of the king and ſo forth, effects of equal value muſt in that caſe be given, and a fine of the ſame amount be paid to the king.

THE *Mitá ſharâ*, *Retnácara*, and the reſt concur in this expoſition. The author of the *Mitácſharâ* inſerts this hemiſtich as an exception to a text quoted in the preceding ſection (XXV). Here the thing is made good without intereſt, becauſe he muſt make good, out of his own effects, the thing bailed, which has been loſt by accident. This is not inconſiſtent with the opinion of others *grounded on the following text.*

XXXVI.

NA'REDA:—HE, who reſtores not a depoſit to the bailor, though required by him, ſhall be fined to the uſe of the king; and, if it be *afterwards* loſt, ſhall pay its full value.

2. AND he, who procures advantage for himſelf *by the thing*

bailed, without the conſent of the bailor, ſhall be amerced, and be liable to pay the value of the thing with intereſt.

THEY hold, that a fine is here directed, if the depoſit be fraudulently withheld, though not loſt; and the fine ſhall be equal to the value of the thing, as in the preceding caſes, and as intimated by the ſequel of the text: the depoſit muſt of courſe be reſtored; but it ſhall be reſtored with intereſt, on the concurrent import of the text of VRĬHASPATI.

IF a thing, not reſtored on demand, be loſt, without any fault on the part of the depoſitary, by the act of GOD or the king, its value ſhall be made good to the owner without intereſt; as has been already mentioned almoſt *in as many words*. A certain author ſays, if a thing be merely refuſed when demanded, it ſhall be made good with intereſt; but, if it be alſo loſt by accident, its value ſhall be paid without intereſt, and a fine ſhall be paid to the king. Of theſe opinions, whichever ſeems beſt ſupported, may be adopted.

THE ſecond verſe (XXXVI 2) has been in a manner already expounded; for it correſponds with the text of VRĬHASPATI (XXXI): and the amercement ſhall be equal to the value of the thing; for what is affirmed in one caſe, is applicable to other ſimilar caſes.

XXXVII.

MENU:—HE who reſtores not a thing really depoſited, and he, who demands what he never bailed, ſhall both be puniſhed as thieves; or pay a fine equal to the value of the thing claimed.

IN a ſuit, where a depoſit is alleged by one party and denied by the other, if it be proved, that the thing was in fact bailed to him, the depoſitary ſhall be puniſhed as a thief; according to the quantity and nature of the thing proved to have been bailed, he ſhall be puniſhed as a thief, by death or confiſcation or other puniſhment ordained for the theft of ſuch things in certain quantities: and ſuch ſhall be the puniſhment, even though the depoſit be

merely denied. But if the depositary be *in general* virtuous, the legislator directs, that he shall only pay a fine equal to the value of the thing: consequently he shall not in this case be punished by death or *confiscation or* the like. The same must be understood of the claimant, according to the circumstances of the case, if it be proved that no deposit was made. CHANDE'SWARA holds, that they shall be punished as thieves, *if the suit regard* valuable things; and pay a fine equal to the value of the thing in the case of a trifling demand. CULLU'CABHATTA says; 'they shall be punished as thieves, if gold, gems, pearls or the like be demanded; or, in the case of a trifling demand, shall pay a fine equal to the value of the thing claimed.' But a *Bráhmana*, he adds, whether virtuous or not, who withholds a thing deposited, or demands what he never bailed, is not liable to the punishment of death and the like.

XXXVIII.

MENU:—THE king should compel a fraudulent depositary, without any distinction between a deposit under seal or open, to pay a fine equal to its value.

AND that, if the *Bráhmana* be free from vice; but if he be vicious, he shall pay a fine equal to double its value, as directed in a text which will be quoted from the *Matsya purána*. Such is the modern interpretation. CHANDE'SWARA remarks; punishment similar to that of theft is denied by the second text (XXXVIII); and the exaction of a fine equal to the value of the thing is positively ordained, whether the deposit be of considerable or trifling value; and that is to be understood in the case of a *Bráhmana* being the depositary. "Without any distinction between a deposit under seal or open;" from this expression it appears, that all that which has been propounded respecting the nondelivery of open deposits and so forth, is also applicable to the nondelivery of a sealed deposit, the unauthorized use of it and so forth. CULLU'CABHATTA says, let the king amerce a fraudulent depositary in a sum equal to the value of the thing bailed: from the parity of the cases, the text does not repeat, that he, who demands what he never bailed, shall also be fined. If the offence be great, it might appear from the preceding text, that corporal punishment

is

is to be inflicted on any other than a *Bráhmana;* this text denies it, for the law directs a pecuniary fine. Nor is the preceding text unmeaning; for this text applies to a first and slight offence; and the preceding text intimates a pecuniary fine, for a second offence; that is, the highest amercement ordained in cases of theft.

XXXIX.

MENU:—THAT man, who, by false pretences, gets into his hands the goods of another, shall, together with his accomplices, be punished by various degrees of whipping or mutilation, or even by death.

IF any man, except a creditor or a *Bráhmana*, by fraud or by violence and causing much pain and so forth (for "pretence," is expressed in the plural number) get into his hands the goods of another, whether they be things bailed or otherwise (for the precept is general;) he shall, together with his accomplices, be punished by various degrees of corporal pains short of death, or even by death; that is, by a blow with the hand or *with* sandals, or by cutting off the hand or foot, or even beheading, according to the value of the goods, the qualities of the man, his class, and the like. First taking the goods, afterwards behead him or otherwise punish him.

"BY false pretences;" by frauds of various kinds. "His accomplices;" those who have assisted him in getting into his hands the goods of another. "Publickly;" in an open place. CHANDE'SWARA.

HE, who obtains the goods of another by fraud, under a false pretence, (telling him; "the king is angry with thee, I will save thee, give me some thing," and thus receiving, as a gratuity, wealth, a female *slave*, or the like;) shall, together with his accomplices, be punished by the king in the presence of many people, by various degrees of punishment, such as mutilation of hand or foot, beheading, and the rest. CULLU'CABHATTA.

XL.

Matsya purána:—HE, who restores not a thing really deposited,

poſited, and he, who demands what he never bailed, ſhall both be puniſhed as thieves, or ſhall pay a fine equal to double the value of the thing claimed.

This text is reconciled by Chandéswara to the text of Menu (XXXVII), by directing, that the fine ſhall be equal to the value, or to double the value of the thing claimed, according to the good or bad general conduct of the perſon to be puniſhed. Any other than a *Bráhmana*, if vicious, ſhall be puniſhed as a thief; if virtuous, ſhall pay a fine equal to the value of the thing: but a *Bráhmana*, if vicious, ſhall pay a fine equal to double the value of the thing; if free from vice, a fine equal to the value only. Any other than a *Bráhmana*, who, by falſe pretences, gets into his hands the goods of another, ſhall receive corporal puniſhment proportionate to the caſe; but a *Bráhmana* ſhall incur the pecuniary puniſhment ſubſtituted for corporal puniſhment, as declared under the title of theft: ſuch is the modern interpretation.

If the goods of another be obtained by falſe pretences, various degrees of corporal puniſhment ſhall be inflicted on the offenders. The fraudulent depoſitary ſhall be puniſhed as a thief, if the depoſit conſiſt of gold, gems, pearls, or the like. In the caſe of a trifling demand, the fine ſhall be equal to the value of the thing, if it concern any other than a *Bráhmana*, and his general conduct be good; but equal to double the value, if his morals be not good. A *Bráhmana* ſhall never be puniſhed like a thief, whether the value of the depoſit withheld be conſiderable or trifling, nor if the thing have been obtained under falſe preten ,but he ſhall pay a fine equal to its value. Such is the mode according to the opinion of Chandéswara. But according to Cullúcabhatta, any other than a *Bráhmana*, who obtains gold, gems, pearls or the like, by falſe pretences, or withholds a depoſit conſiſting of ſuch valuable effects, for a ſecond offence ſhall be puniſhed as a thief; but if the thing be of trifling value, he ſhall pay a fine equal to its worth. It certainly follows, that in all caſes a *Bráhmana* ſhall pay the value of the thing. Or a fine, equal to double the value of the thing (XL), may be applicable to the caſe of a *Bráhmana*, on a ſecond offence, if gold or pearls or the like be demanded; but the

fine

fine ſhall be equal to the value only, for a firſt offence, whoever be the perſon, or whatever be the thing. MENU mentions incidentally puniſhment by death and ſo forth in the caſe of a man, who obtains the goods of another by falſe pretences.

SOME hold, that he, who reſtores not a depoſit or who embezzles it, and he, who falſely claims a depoſit, and *thus* obtains the goods of another by falſe pretences, ſhall be puniſhed as thieves, if they be vicious and devoid of all virtue: but, if neither vicious nor virtuous, or both vicious and virtuous in equal degree, they ſhall be amerced in double the value of the thing; and if virtuous and not vicious, in the value only. By the term "not reſtoring a depoſit," is intended impoſition by artful diſcourſe, not the concealment of the depoſit; but embezzlement is the fraudulent withholding of the depoſit: the fraudulent withholder covetouſly deſires to appropriate the thing by falſe aſſertions; he is deſcribed by CULLUCABHATTA. Since corporal puniſhment cannot be inflicted on a *Bráhmana*, the puniſhment ſubſtituted for it, under the title of theft, muſt be underſtood in the expreſſion "puniſhed *as thieves*." In the ſecond text quoted from MENU (XXXVIII) "ſhall be puniſhed as thieves" muſt be fetched from the preceding text (XXXVII): and the latter text (XXXIX) gives ſome detail on the puniſhment of thieves. The texts of other ſages (XXXVI 1 &c.), intimating a fine equal to the value of the thing, relate to the caſe of a man, who is in general virtuous and free from *all* vice. Of the various ancient and modern opinions, one is to be ſelected; many have been mentioned for diſcuſſion.

CA'TYA'YANA propounds a diſtinction on bailments for a ſtipulated time.

XLI.

CA'TYA'YANA:—A DEPOSIT *(upanid'hi)* ſhall be recovered at the time ſtipulated; but let the *owner* leave it until the period expire: when that does expire, if the depoſitary reſtore not the thing, he ſhall be compelled to pay the fine.

" RECOVERED " by the bailor, " At the ſtipulated time;" at the fixed time for receiving it back. " Until the period expire;" whilſt leſs than that time is elapſed. Hence he ſhall recover it when the period is elapſed and not before. But a depoſitary, not reſtoring the depoſit when the full period is expired, ſhall be chaſtized. The *Retnácara.*

WHATEVER fine, for whatever kind of property, has been declared in the caſe of a thing bailed without ſtipulating a period, double that fine ſhall, on the authority of the law, be paid by him, who does not reſtore at the ſtipulated time a thing of a ſimilar kind, which had been bailed for time. It follows, that, in the caſe where the fine is ordained at double the value of the thing bailed, he ſhall pay four times the value, if it was bailed for time.

SIMPLE men hold, that " double the fine " intends double the value including the fine; the fine ſhall be equal to the value of the thing, and the value ſhall be paid to the owner. This ſuppoſes a caſe where the depoſitary is in general virtuous: and the text intimates, that there is no fine, if a thing bailed for time be refuſed before the time expire.

BUT others interpret the text, ' when a period is not ſtipulated,' inſtead of " when the period does expire." If the depoſitary reſtore not the thing on demand, he ſhall pay double the fine, that is, double the value including the fine; and they apply this hemiſtich to the caſe of a thing bailed for no ſtipulated time, provided the depoſitary be in general virtuous. Others again explain " double the fine," double the ſum as a fine: conſequently the depoſitary ſhall pay double the value of the thing by way of fine: and they hold, that this is conſiſtent with the opinion delivered in the *Retnácara*, where this text is conſidered as relating to the ſame ſubject with the text of the *Matſya purána*. This opinion, in part comprehending that of others, ſeems ſatisfactory.

A DEPOSIT " *(upanidhi)* is here employed in a general ſenſe (v. VIII).

XLII.

CA'TYA'YANA:—HE, who having received a loan for uſe, does

does not return it, though required *by the owner*, shall be compelled to restore it by harsh reproof, or shall be amerced if he *still* refuse to restore it.

HAVING borrowed ornaments for decoration, an awning or the like for a company, and so forth, if he do not restore them, though demanded by the owner, the king, reproaching him in opprobrious terms, shall require him to return them; if even then he restore them not, he shall be amerced: and the fine may be equal to the value of the thing, as before directed. For CA'TYA'YANA applies the law respecting bailments to loans for use and the like, declaring, that "these rules are propounded for all deposits *(upanid'hi)*." But the additional text intimates a distinction, which will be mentioned by and by (LI).

IT must be considered, that if a creditor, having artfully obtained from his debtor an awning or the like, refuse to restore it, employing legal deceit, as authorized by VRIHASPATI, for recovery of the debt, *he is* not to be reproached; but shall be made to give credit for it in payment of the debt: and that supposes the period, for which the loan was made, to have expired; and the debtor to have neglected, or to be unable to pay the debt. But if the period have not expired, he cannot employ artifice. And further the same rule is applicable to deposits and the like, according to circumstances.

A DISTINCTION is mentioned in the case of loans for use.

XLIII.

CA'TYA'YANA:—WHEN it is borrowed for a particular purpose or a specified time, if it be demanded when the purpose is only half accomplished, it shall not be recovered; nor shall the borrower be compelled to restore it.

IF a man have borrowed an awning for the company entertained at the nuptials of his son, the owner cannot take it back, on the day of the nuptials, after one watch of the day is passed; for the purpose is only accomplished in part. But it may be taken if the purpose have been fulfilled: it certainly cannot

cannot be exacted, if any part of the purpose be yet unaccomplished. So, if ornaments or the like he borrowed to be worn a month, the ornaments cannot be taken back before the end of the month: and the wearer of the things borrowed shall neither be amerced, nor reproached.

A FURTHER distinction is mentioned.

XLIV.

CA'TYA'YANA:—BUT, where the owner's purpose would be disappointed from the want of that thing, the borrower may be compelled to restore it, before the time stipulated, even though his purpose be only accomplished in part.

"WHERE the owner's purpose would be disappointed" *(vipatti)*; where his business would go to ruin, according to the literal sense of the verb *pad* move. Consequently, if the owner's business would be exposed to disappointment for want of that thing, it may be taken back by him before the period expire, even though the borrower's purpose be only half fulfilled; meaning generally though it be not fully accomplished. If the borrower refuse to restore it immediately, he may be fined or reproached, according to circumstances.

IT must be understood, that all these rules provide against fraud. Therefore, when a thing, borrowed to be used a month, is sent to another province, and the owner happens to need the thing, but it cannot be brought back, the borrower shall not be fined or reproached, though the owner's purpose be disappointed: but the borrower must mention at the time of borrowing the thing, that he intends to send it to another province. This must be considered as deducible from plain reasoning.

WHAT is to be done in a suit, wherein a deposit is alleged by one party and denied by the other? There must be a trial by ordeal (XV).

"A DEPOSIT is declared to be of two sorts." A deposit authenticated by a writing is not distinguished by any sage. This meaning is there denoted:

without

without a purpoſe of his own, a depoſitary does not execute a writing; but the depoſitor cauſes the bailment to be atteſted. Why is it ſaid, under the title of loans, that a written acknowledgement of a pledge ſhall be given by the creditor to the debtor? The anſwer is, as a loan is made from a deſire of gain, ſo a writing is executed by the creditor from a wiſh to confer a favour while he takes a pledge, by *furniſhing* grounds for confidence, *that the thing ſhall be received back*. But ſome admit a depoſit authenticated by a written contract.

"IT muſt be reſtored in the condition and manner in which it was bailed" (v. XV): the depoſit, whether ſealed or open, atteſted or unatteſted, muſt be received back in the ſame manner in which it was bailed. If altered, or denied, there muſt be a trial by ordeal: without it the depoſit is not eſtabliſhed, on the ſimple aſſertion of the plaintiff.

Two modes of proof are declared for the two ſorts of depoſit, atteſted and privately bailed.

XLV.

VRĬHASPATI:—HIM, who is convicted by the evidence of witneſſes, or by ordeal, of ſecreting a depoſit received, let the king compel to reſtore the depoſit, and to pay a fine equal to its value.

IF an atteſted depoſit be denied by the depoſitary, let the king, aſcertaining it by the evidence of competent witneſſes, compel him to reſtore it; and, aſcertaining by ordeal a thing privately bailed, let him compel the depoſitary to reſtore it. On the authority of the text of YA'JNYAWALCYA ("on failure of each of theſe, ordeal is ordained in each caſe") proof by ordeal is admitted by the author of the *Mitácſharà*, on failure of evidence.

XLVI.

MENU:—THE king muſt decide the queſtions after friendly admonition, without having recourſe to artifice; for, the honeſt diſpoſition of the man being proved, the judge muſt proceed with mildneſs.

OMITTING reproaches and artifice or the like, such as bailing other effects to him, let the king decide the question after friendly admonition, and not hastily direct a trial by ordeal; or considering the character of the man, and knowing his honest disposition, let the judge proceed with mildness. The text, thus expounded by CULLU'CABHATTA, forbids hasty recourse to ordeal. Therefore recourse must be had to sensible proofs.

XLVII.

MENU: — HE, who restores not to the depositor, on his request, what has been deposited, may first be tried by the judge *in the following manner*, the depositor himself being absent.

2. ON failure of witnesses, let the judge actually deposit gold, *or precious things*, with the defendant by the artful contrivance of spies, who have passed the age of childhood, and whose persons are engaging.

3. SHOULD the defendant restore that deposit in the manner and shape, in which it was bailed *by the spies*, there is nothing in his hands, for which others can justly accuse him;

4. But if he restore not the gold, *or precious things*, as he ought, to those emissaries, let him be apprehended and compelled to pay the value of both deposits: this is a settled rule.

IF the depositary do not restore the thing, though required by the depositor, let him be sued before the king. Let the judge immediately demand it of the depositary with mild expostulation, without threats. If the depositary, apprehending the disgrace of a fine, or of corporal punishment, which it is the king's duty to inflict, and reflecting that he cannot conceal the fact, acknowledge the deposit, he shall be compelled to restore it: and in this case, there is no ordinance exempting him from

a fine. But if he do not acknowledge the depoſit, let it be tried by oral evidence: this appears from the mention of "failure of witneſſes." If there be no witneſſes, (the depoſit having been privately made, or the witneſſes being dead,) the legiſlator directs, "let the judge actually depoſit gold, *or precious things*, with the defendant by the artful contrivance of ſpies apt in detecting ſecret practices, who are neither very old nor very young, and whoſe perſons are engaging:" meaning generally ſpies qualified for the employment. By artful contrivance or ſtratagem, actually depoſiting gold belonging to himſelf, let him try the matter; the text ſhould be ſo ſupplied. The legiſlator ſubjoins the teſt: ſhould the defendant's veracity be unimpeached in every reſpect, the depoſit being kept *and reſtored* as it was bailed, he muſt be acquitted of the offence for which he is accuſed by the claimant: becauſe, were he diſhoneſt, he would ſecrete the thing bailed by diſguiſed emiſſaries. Let the judge alſo try the honeſty of the ſuppoſed depoſitor; and if both appear honeſt, let him have recourſe to ſome other mode, ordeal or the like: ſuch is the induction of common ſenſe. "But if he reſtore not the gold," let him be compelled by harſh reproof, to make good both ſorts of depoſit, ſealed and open;* and the reproaches and puniſhment ſhall be proportioned to the trouble he has occaſioned. The *Retnácara* and the reſt concur in this interpretation.

Here a doubt may occur, ſhould the ſuppoſed depoſitary, or depoſitor, be acquainted with the rules of judicial procedure. If the man do not act diſhoneſtly in regard to the thing bailed by emiſſaries, though he be diſhoneſt in regard to the depoſit claimed, his practices cannot eaſily be detected. For this purpoſe much labour muſt be employed. Let the judge, night and day, place ſpies in diſguiſe, on all ſides of him, and near the walls of his houſe, that it may be known, by means of ſuch emiſſaries, what converſation he holds with his intimate friends, at various times; and what his occupations are: the mode mentioned by the ſage is merely an example.†

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* The tranſlation of the text, as given in the Inſtitutes of Hindu law, Chapter VIII, v. 184, has been followed in preference to this interpretation.

† The compiler takes occaſion to relate a popular tale. A ſoldier, intending to travel to a country, and wiſhing to place in other hands his property conſiſting of gold and ſilver, put it

CHANDE'SWARA expounds "artful contrivance," ſtratagem. He, who interrogates *(prích'haṭi)*, is the interrogator *(prát)*. He, who pronounces *(vivaćti)*, is the pronouncer *(vivác)*: firſt the judge *(prádvivác)* is interrogator, next pronouncer *of judgment;* an appoſition in the form called *carmad'háraya*, as in the example, 'bathed and anointed.' Having firſt inquired all circumſtances from the plaintiff, the judge *(prádvivác)* himſelf pronounces what is proper: he is an officer of the king.

IF it be alleged by the depoſitor, that a hundred *ſuvernas* were bailed, and it be proved by witneſſes, or by any other popular proof, or by ordeal, that fifty *ſuvernas* were bailed, the following text ſhows what is to be done by the king in that caſe.

XLVIII.

MENU: — *Regularly*, a depoſit ſhould be produced, the ſame in kind and quantity as it was bailed, by the ſame and to the ſame perſon, by whom and from whom it was received, and before the ſame company, *who were witneſſes to the depoſit:* he, who miſtates a depoſit, ought to be fined.

THE depoſitor, who claims more, and the depoſitary, who acknowledges leſs than was depoſited, ought to be fined. Such is the meaning according to the *Ratnácara;* and in this CULLŪCABHATTA concurs. "Be-

oil, which he delivered into the hands of an oilman, ſaying, "keep this jar of oil for me." The oilman, ſuſpecting from its great weight, that the veſſel contained ſome metallick ſubſtance, took out the gold and ſilver, and filled up the veſſel with oil. The ſoldier, returning, received back the jar of oil, and miſſing the gold and ſilver, demanded his property from the oilman. He replied, "this is the very jar of oil which was entruſted to me, take it away. I know not what it contained." The ſuit was carried before the king, who, after much inveſtigation, told the oilman, "I will give an anſwer, after making trial of your honeſty; let this wooden cheſt remain in your houſe one night, on your bringing it back in the morning, the queſtion ſhall be decided." Pacifying it a ſeaſible and learned man furniſhed with paper, pen and ink, he delivered to the oilman a ſmall wooden cheſt, in the lid of which many holes were bored. The oilman, having received it, at night in converſation with his wife, ſaid, "the king tries my honeſty by depoſiting a thing of his own with me, and ſuch a thief that, embezzling the king's depoſit, I ſhould never paſs over." Obtaining the king's confidence by reſtoring the cheſt with its contents in the morning, and cheating the ſoldier, I ſhall live in affluence upon the valuable property gained from him." The converſation they wrote down the whole of this and the reſt of their converſation. In the morning, the oilman being brought before him together with the cheſt, the king, informed of the whole circumſtances by the notes taken down by the man who was concealed in the cheſt, I fulfilled his puniſhment on the oilman, and compelled him to reſtore the effects to the ſoldier.

ſore

fore the same company" is mentioned to denote witnesses, but is merely an example: consequently the rule is the same, if the ascertainment be made by other popular proof, or by ordeal. He shall pay a fine equal to that part for which a falsehood was asserted; not, equal to the whole of the effects claimed, nor to the value of the thing *actually* deposited: for the offence is less.

XLIX.

MENU:—SUCH is the mode of ascertaining the right in all these cases of a deposit: in the case of a deposit sealed up, the bailee shall incur no censure on the redelivery, unless he have *altered the seal, or* taken out something.

HE shall incur no censure if he have taken out nothing from a sealed deposit; but he shall incur censure, if he have taken out any thing: and, if he take out any thing from an open deposit, he shall incur no censure, if he afterwards restore it.

THE *Retnácara.*

WE say, such is the mode of ascertaining the right and recovering the deposit, (namely the mode abovementioned XLVII 2) in all these cases of deposit (meaning generally all deposits, loans for use and the like): consequently, in the case of any deposit, or loan for use, if the depositary acknowledge the receipt of silver, and the depositor allege a bailment of gold; or if the contest regard the quantity; it shall be tried by the evidence of witnesses, by artifice, or the like, as directed by the former text (XLVII 2). But, in the case of a deposit sealed up, if it be proved, that the depositary did not break the seal, and, after taking out something, seal it up again, he shall incur no censure or disgrace. Herein CULLU'CABHATTA concurs. *

L.

* THE compiler takes occasion to insert in his text another popular tale. A rich man placed in the house of a friend two jars filled with effects, having closed the mouth of each jar with lac, on which his own seal was impressed. Some time after his death, his son, inspecting his father's notes of his income and expenditure and of the disposal of his property, and finding a note of those two jars, claimed them: and the depositary accordingly restored them. The owner's son, opening both vessels, found gold coins in one, and pieces of iron in the other. Upon this he addressed the depositary; "were pieces of iron [illegible] to thee by my father? Restore to me the gold coins." The other replied: "both jars

L.

Menu:—Thus let the king decide cauſes concerning a depoſit, or a friendly loan for uſe, without ſhowing rigour to the depoſitary.

In the mode before directed, without ſhowing rigour to the ſuppoſed depoſitary. So the *Retnácara*. The gloſs of Cullu'cabhatta is ſimilar.

By this it is expreſſed, that, in aſcertaining the right in the caſe of a depoſit, rigour, and deceit and other expedients propounded by Vrihaspati, ſhall not be employed againſt the ſuppoſed depoſitary, as in aſcertaining the right and ſo forth in caſes of debt. If it cannot be aſcertained by popular proof, ſuch as the evidence of witneſſes and the like, it ſhall be tried by ordeal (XIII). Proof by ordeal is directed for both parties, the ſuppoſed depoſitor and the ſuppoſed depoſitary: ſo the text is explained in the *Retnácara*. Conſequently, in a ſuit, wherein one party alleges a depoſit, which the other denies, ordeal is ordained to determine the right: to anſwer the queſtion, whether the ſuppoſed depoſitor or depoſitary ſhall ſubmit to ordeal, the text directs both parties, *that is, either party*. In this caſe the rule is, that ordeal ſhall be performed by whichſoever party appears to ſurpaſs the other in honeſty; it is not poſitively required, that ordeal be performed by the party accuſed. In caſes of bailment for delivery, loans for uſe, and the like, the trial by ordeal on failure of evidence, the deciſion, and the amercement, ſhall *in general* be the ſame as in the caſe of any other depoſit (XI). but a diſtinct fine is mentioned in the caſe of a loan for uſe.

LI.

Maſyi purána:—He, who, having received a loan for uſe, does not reſtore it as he ought, ſhall be compelled to reſ-

were marked with the father's ſeal; I know nothing of their contents." The diſpute being referred to arbitrators, theſe declared on ſeeing the box, on which was the impreſſion of his father's ſeal, broken into pieces, and the depoſit gone for eſſayed, "that ſeal was made by ſome artiſt, not by my father." After reflection, the arbitrators weighed the pieces of iron and the gold coins, and finding the weight of both equal, and ſeeing in the *ſtreets* in the *diſpoſal* of the *eſſayers*, that two jars were ſometimes applied to the depoſitary's houſe, they determined, that the pieces of *iron* were *probably* placed to verify the weight of the gold; and that the parties were reconciled. Therefore, adds the commentator, in the caſe of a ſeal depoſit, the ſeal ſhould be broken before witneſſes, or the thing ſhould be counted and carefully weighed by the falſe ſeal-impreſſers.

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tore it by harſh reproof, or ſhall be fined in the firſt amercement.

It is here denoted, according to Chande'swara, that, if a loan for uſe be not reſtored, the fine ſhall not be equal to the value of the thing, but equal to the firſt amercement; for, no where otherwiſe explaining the text of Ca'tya'yana (XLII), he cites this text, which directs the firſt amercement, immediately after the text of Ca'tya'yana.

The reconciling of theſe texts, by diſcriminating the degrees of virtue in the depoſitary, is proper, as well as the texts of ſeveral ſages, which direct, that a man, who embezzles a depoſit, ſhall be puniſhed like a thief, or pay a fine equal to the value of the thing, and the like. As the law of depoſits in general is fitly extended to loans for uſe, and the firſt amercement is, in ſome caſes, the puniſhment of a thief, we hold, that this text refers to thoſe caſes. The firſt amercement is propounded by Menu: "now two hundred and fifty *panas* are declared to be the firſt *or loweſt* amercement;" and it has been often explained.

As a depoſit, whether ſealed or open, may not be redelivered to ſons or the reſt, ſo a loan for uſe may not be redelivered to them, while ſent the owner lives: why ſhould it be otherwiſe? But with the owner's conſent it may be delivered to ſons and the reſt, and even to a ſtranger.

LII.

Vrihaspati:—He offends not, if he deliver a thing borrowed for uſe, *to another perſon*, with the conſent of the owner.

Supplied from the gloſs of the *Retnácara*: and common ſenſe extends this very rule to open depoſits and the reſt. But the owner's conſent ſhould be atteſted; otherwiſe, a ſubſequent conteſt would not be obviated.

If the thing, borrowed for uſe, be loſt by accident after the expiration of the period for which it was borrowed, an equivalent muſt be given: for the caſe is ſimilar to that of a bailment with an artiſt.

LIII.

LIII.

CA'TYA'YANA:—IF the artiſt keep the thing bailed, after the time agreed on for working it *into ornaments and the like*, he ſhall be forced to pay its value, even though it be deſtroyed by the act of GOD.

2. WHAT is deſtroyed by his own act is loſt to the hired *artiſt, and ſhall be made good* even earlier *than the time ſtipulated;* but if he have tendered it, it is loſt to the owner who did not accept it.

"THE time agreed on;" the number of days appointed as the period *for working the thing bailed into ornaments or the like.* "The thing bailed;" the bailment with an artiſt. After the time for which it was received; that is, received on a promiſe to deliver ornaments at the expiration of ten days, *or other ſimilar promiſe.* If the artiſt keep the thing after that time, beyond the ſtipulated period, he ſhall be forced to make it good, even though it be deſtroyed by the act of GOD or of the king. Such is the meaning of the firſt text. What is deſtroyed by an act contrary to the owner's requiſition, ſhall be made good to the owner by the hired *artiſt*, even earlier than the ſtipulated time; but, if he tender the thing finiſhed in the mode directed, and the owner do not accept it, and it be afterwards deſtroyed by the act of GOD, it ſhall not be made good to the owner by the hired *artiſt.*

The *Retnácara.*

THE meaning of this gloſs is, that, where ornaments or the like are intruſted to an artiſt, for repair; in that caſe, if the artiſt, from his own conceit, without the aſſent of the owner, attempt to remake the unbroken parts; and the ornaments, happening to be old, are deſtroyed; the artiſt ſhall pay the value, or deliver an equivalent to the owner, even earlier than the time agreed on for repairing the ornaments.

OTHERS, interpreting "hired" to mean in this place artiſt, and reading "in the caſe of a thing deſtroyed by his act," explain "act," work different

different from that directed by the owner; and supply the words "*bailed to an artiſt:*" and the interpretation is this; "in the caſe of a thing bailed to an artiſt, and injured by his acting inconſiſtently with the owner's directions, the artiſt *ſhall be forced to pay its value;*" for this is inferred from what preceded. Conſequently, if a part, however ſmall, of the thing in queſtion be broken by working on the part directed by the owner, it muſt be reſtored to its former condition; that is, the loſs falls on the artiſt.

THE laſt hemiſtich of the *ſecond* verſe conveys this ſenſe; if the artiſt, having finiſhed the work on thoſe parts, for which the thing was intruſted to him, tender it to the owner, and he do not receive it, ſaying, "let it remain for the preſent," or deſiring the work to be done in another manner, it is the owner's loſs: that is, it ſhall not be made good by the artiſt. But if the artiſt, agreeing to do the work in another manner, fixed a time, then, ſhould that agreement be infringed, the fault is his.

SHOULD it be conteſted by the owner, that he had directed different work; and by the artiſt, that the very work directed was performed; in this caſe, the artiſt, even though he had tendered the thing, ſhall be compelled to pay its value, if it be proved that different work had been directed; but not otherwiſe. And in every caſe he ſhall be forced to pay its value, if he had not tendered it.

HERE learn incidentally what is to be done by the owner. In a caſe, where the form of the work is diſputed, let him firſt receive his own chattel, and afterwards conteſt the matter, at the time of paying the artiſt's wages. If the artiſt will not deliver the thing without receiving his wages, it is no tender; in this caſe, witneſſes ſhould be taken. When the cauſe is tried at a ſubſequent time, the right of one party being aſcertained by evidence or by ordeal, whoever is caſt in the ſuit, the loſs ſhall be his, even though the thing have been loſt by accident. If the wages have been already paid, or it be ſuſpected, that the thing has been changed, let the owner inſtantly apply to the king or his officer, or take witneſſes as abovementioned.

THIS and other points ſhould be underſtood in the caſe of a thing ſeized

by the king or the like, as well as in the case of a thing lost by the act God: and the same also, according to circumstances, if gold, silver, or like, be bailed for working into new ornaments.

LIV.

VRĬHASPATI:—If the loss be *occasioned* by the defects of t thing bailed, the artist shall not be compelled to make good; but if the loss happen by the artist's fault, he sh be compelled to make good what was intrusted to hi for repair, *or for work*.

In the case of a loss caused by the defects of the thing bailed, (if it unfit to bear the heat of the fire or operation of cutting and hammering, consequence of its being very old,) there is no fault in the artist: for exa ple; where a gun is to be repaired, of which the wood or the iron is fo too weak, in consequence of its being very old. Otherwise, it is the arti fault, if it be destroyed by a pin driven through it, or the like: for exa ple, if the gun be broken, where the wood and iron are joined, by a str of a hammer in a wrong place: and so in other cases.

LV.

VRĬHASPATI: — If the property of another, bailed by t mode called *nyàsa* and the rest, be consumed, or neglect and lost even without design, the bailee himself is the ma who must make them good.

Not his son, wife, or other heir. But if lost by the fault of the h he shall be compelled to make it good; so the text is explained in *Retnácara*.

Since a deposit, consumed by the depositary, is equal to a debt, it ou to be recovered from the son or other heir: but this distinction is not m tioned by any sage; and it has only been so settled by authors. If the posit be lost by the depositary, it shall not be recovered from his son other heir; but if lost by his son or other heir, while the depositary

alive, it ſhall be recovered from that heir: or it may be recovered from the father, ſince the ſon's loſs may be admitted to be the father's loſs, in the ſame manner as the law directs (Ch. IV, v. LVI), that the gain, made by a ſon before partition, is the father's. If it be deſtroyed by a ſtranger, it is conſidered as the act of GOD: and the thing ſhall not be recovered from the depoſitary; but, from that ſtranger. This is to be inferred from common ſenſe, and from the text of CA'TYA'YANA (XXVII 2).

SHOULD the depoſitary lend to another the thing bailed, what is the rule in that caſe? It is anſwered, if he lend it by conſent of the owner, the gain and the loſs are the depoſitor's: and this is controverted by none. He ought not to lend it, without the owner's conſent: but, if he do lend it inadvertently, the gain is the owner's; for he only has property in the thing; and the depoſitary, like a box or the like, is merely the holder of it. If the loan be loſt by the death or inſolvency of the debtor, the depoſit muſt be made good by the depoſitary; ſince it was loſt by the fault committed by him in lending it. Neither a gift, a ſale, nor other alienation by the depoſitary is valid, as will be mentioned under their reſpective titles. Thus may the law be conciſely ſtated.

ACCORDING to the opinion of thoſe, who admit a thief's property in the thing ſtolen, the bailment of effects ſtolen is valid. *Let the reader* draw his own inferences on this and other *topicks*.

CHAPTER

CHAPTER II.

ON SALE WITHOUT OWNERSHIP.

SECTION I.

ON THE AVOIDANCE OF SALE WITHOUT OWNERSHIP.

I.

VRĬHASPATI:—AFTER bailments, ſale without ownerſhip has been propounded by BHRĬGU: liſten attentively to that law, which I promulge together with the particulars *regarding the production of the ſeller and the juſtification of the buyer.*

IF the depoſitary ſell the thing bailed; what ſhall be the conſequence? In anſwer to this queſtion, the law on ſale without ownerſhip is adduced. To this *order of promulgation*, BHRIGU alſo aſſents. "Together with the particulars" relative to the production of the ſeller, the juſtification of the buyer, and ſo forth. Under this title he firſt defines ſale without ownerſhip.

II.

VRĬHASPATI:—HE, who clandeſtinely ſells an open depoſit, a thing bailed for delivery, a ſealed depoſit, effects ſtolen, a pledge, or a thing borrowed for uſe, *or bailed to an artiſt, or the like,* is conſidered as *ſelling* without ownerſhip.

[1] CLANDESTINELY;" in ſecret.

A CHATTEL belonging to the man himself, delivered to another without transferring the property, is a deposit. When one intrusts his own effects to another, through the intervention of a third, the chattel so intrusted to an intermediate person is a deposit for delivery. All this must be understood as already explained. A thing intrusted under seal is a sealed deposit: both sorts are mentioned, as a priest and a mendicant *are distinguished.* "Stolen;" seized by thieves. "A pledge;" a thing hypothecated. "A thing borrowed for use;" ornaments or the like asked and obtained for decoration and so forth. This is general, comprehending bailments with artists and so forth. He, by whom such a thing is sold, is a non-owner. Such is the meaning of the text. Consequently the sale, effected by him, is sale without ownership. This must be understood as the import *of the text;* otherwise, the establishing of a technical sense *for the word* asvāmi (non-owner) would be superfluous, since any other than the owner, whether a depositary or not a depositary, whether a seller or not a seller, has no ownership. But now there is no difficulty in explaining the term "non-owner" as employed to denote sale without ownership.

III.

NA'REDA:—WHEN a thing bailed, or the goods of another lost *by him* and found *by a stranger*, or effects stolen, are clandestinely sold, it must be considered as a sale without ownership.

THE intrusting of one's own effects to another is bailment as defined by NA'REDA. It comprehends loans for use and the rest, conformably with the sense of the verb *nikshép*, bail or intrust; the law of bailments having been extended to loans for use (Chap. I, v. III & XI); for there is no difficulty in extending the laws promulged under the title of sale without ownership to these trusts, by the comprehensive sense of the pronoun "it." "Lost;" missed by the owner. The text must be so supplied. Some person, travelling on a road, drops a thing, which is not recovered though diligently sought: in such cases, the thing is lost, but not abandoned by the owner: consequently it is not a waif. When that thing is found and sold by any person, it is sale without ownership: and so, when a thing is sold, which

which had been ſtolen, or taken by fraud or force, in the day or night, from the owner's houſe, without his conſent.

THE relative (III) belongs to the action: conſequently that ſale, which is made by a non-owner, is a ſale without ownerſhip; the term "*ſale*" being taken in the neuter ſenſe. Or the relative belongs in conſtruction to the goods of another which are ſold: conſequently that chattel, appertaining to another, which is *thus* ſold, is a ſale, or thing ſold, without ownerſhip; the word "*ſale*" being taken in the paſſive ſenſe: and many ſo explain the text.

IV.

VYA'SA:—WHEN the goods of another are ſold in the owner's abſence *whether they had been* borrowed for uſe, bailed for delivery, depoſited under ſeal, or ſtolen, it is a ſale without ownerſhip.

IN this text the pronoun ſtands in the maſculine gender, becauſe ſale *is* maſculine; as in a former text concerning ſecret bailments (Ch. I, v. VI) where neither the thing nor the act of depoſiting it, which might be intended by the pronoun, is maſculine, but the word bailment *(nyáſa)* only *is maſculine*. Any property of another, which is ſold in the abſence of the owner, whether it had been borrowed for uſe, bailed for delivery, or ſecretly depoſited, or the property of another ſeized or ſtolen, which is thus ſold, is a ſale, or thing ſold without ownerſhip: but according to a former opinion, the ſale of the chattel, which is thus ſold, though it belong to another, is ſale without ownerſhip. The difference in the conſtruction of the text ariſes on the word "it" referred to the ſale, or to the thing ſold. Or even on this opinion, the ſeeming difficulty may be reconciled as before.

"CLANDESTINELY," in the preceding texts (II and III), denotes the want of the owner's aſſent. Conſequently, if the owner aſſent, a ſale made even by one, who *is* not owner, *is* valid: and ſuch *is* the current practice.

V.

MENU:—HIM, who ſells the property of another man, without

out the assent of the owner, the judge shall not admit as a competent witness, but shall treat as a thief, who pretends that he has committed no theft.

TREATING him, who sells the property of another man, unauthorized by the owner, as one who is in fact a thief, but pretends he has committed no theft, the judge shall not admit him as a competent witness; that is, he shall never admit his evidence.

CULLÚCABHATTA.

BUT his punishment will be mentioned in another text.

THE term of "sale without ownership" must be taken in its derivative sense, a sale made by one, who is not owner; for MENU, the highest authority of memorial law, does not specify deposits and the like, in ordaining, that he, who sells another's property, shall not be admitted as a competent witness; and it is irregular to establish another acceptation, when the derivative sense is apposite: and further, in the text of VRÍHASPATI (II) and the rest, deposits and the like are only mentioned illustratively: thus, should any powerful person sell a tree or the like, which belongs to some weaker man, pretending that it is his; on its afterwards appearing from a judicial procedure, that he was not the owner, it is *held* a sale without ownership.

IF any one of the parceners sell property which was inherited by five brothers on the death of their father, is it not a sale without ownership? and is not this inconsistent with the opinion delivered by authors in explaining the following text; namely, that the gift, *or sale*, ought not to be made; but if made, is valid?

VI.

VYÁSA:—A SINGLE parcener ought not, without the consent of his coparceners, to sell or give away immovable property of any sort which the family hold in coparcenary.

IT

It ſhould not be argued, that, each of the five brothers having dominion over that property, a ſale by a ſingle parcener is not a ſale without ownerſhip. The ſeparate dominion of the five brothers over the ſame property is not admiſſible, according to the opinion of Ji'mu'ta-va'hana. Nor ſhould it be argued, that, according to his opinion, the dominion of each is eſtabliſhed over the property, which each enjoys, or which each will receive when a partition is made: and thus the property ſold by the parcener was actually his; and conſequently there is no difficulty. Were it ſo, another parcener could not ſhare the price of that property. It is not proper to affirm, as conſiſtent with the opinion of Ji'mu'ta-va'hana, that other parceners have no ſhare in the price of undivided property ſold by a brother, with whom partition has not been made; but, according to the opinion of lawyers, who contend for the common title of all the brethren in the whole of the wealth, ſurely they are all entitled to a ſhare.

To the queſtion thus propoſed it is anſwered, the term joint wealth, according to the opinion of Ji'mu'ta-va'hana, ſhould be uſed for what is brought into one common tenure; when ſuch property is ſold by any one of the parceners, the price of it is joint property; and in that caſe, what is enjoyed by each, becomes the property of each. Thus is the law demonſtrated. And in this caſe, there is no puniſhment; nor is there a ſale without ownerſhip aſcertained by proof, that another's property has been ſold; ſince it is not certain, whether the ſeller is, or is not, the owner: the ſale is therefore valid.

It ſhould not be objected, that a moral offence is committed, ſince, there is in fact a want of ownerſhip. That is admiſſible; a moral offence is even denoted by the expreſſion, "ought not to be made;" and the ſale of joint property is forbidden, merely in the apprehenſion of a moral offence. In fact the price of property, ſold by any one of the parceners, is enjoyed in common by all. To whom that property, which is ſold, did belong, cannot well be determined, according to the opinion of Ji'mu'ta-va'hana: the dominion of all the parceners over it muſt be aſſerted, like their property in a ſingle horſe or the like.

THE opinion of VA'CHESPATI BHATTA'CHA'RYA may be admitted upon the reaſon of the law: if the whole of the joint property be ſold by one of the parceners, the ſale is not valid, ſo far as regards the ſhares of the other parceners; but is valid ſo far as regards the ſeller's own ſhare: and if it be ſold with the conſent of the coparceners, the ſale of the whole is valid. This will be made evident under the title of ſubtraction of what has been given.

SHOULD a creditor, ſelling a pledge, apply the produce to the payment of his own debts, what is the law in that caſe; for he has no property in the pledge? It is not *univerſally ſo*. But if he ſell it before the period ordained under the title of loans and payment, the ſale is not valid.

VII.

MENU: — NOR, after a great length of time, can he give or ſell ſuch a pledge.*

BUT he becomes the owner of the pledge at the appointed time.

VIII.

VRĬHASPATI: — AFTER the time for payment has paſt, and when intereſt ceaſes, the creditor ſhall be owner of the pledge.†

AND again,

IX.

VRĬHASPATI: — WHEN the debt is doubled by the intereſt, and the debtor is either dead or has abſconded, the creditor may take his pledge, and ſell it before witneſſes.‡

IF the creditor become owner of the pledge, how can the expreſſion of

* Book I, v. CXVII. The text would admit of a different interpretation, which ſeems to be here intended.

† Book I, v. CXV.

‡ Book I, v. CXXI 1.

VRĬHASPATI

VRĬHASPATI be pertinent (having received the amount of his debt, he muſt relinquiſh the balance *)? For this directs, that the remainder ſhall be relinquiſhed; now there is no relinquiſhment of any part of the price, when a man ſells his own property. It muſt be underſtood, that the text above cited (VIII) denotes property in a certain part proportioned to the amount of the debt. Or the creditor becomes owner of the whole pledge, if the agreement were in this form, "ſhould I not redeem the pledge, when the debt is doubled, it ſhall become thy property;" or thus, "ſhould I not redeem it in five years, it ſhall become thy ſole property." But if the agreement run not in ſuch form, the property extends only to a part of the pledge proportionate to the debt. The text bears both ſenſes.

WHEN a piece of land meaſuring a thouſand cubits, or when twenty trees, have been pledged without an agreement in ſuch form, if the debt can be liquidated by the ſale of half the pledge, ſhall the whole be ſold or not? It is anſwered, the whole ſhould not be ſold; for the ſale is only directed for the payment of the debt. It ſhould not be objected, that, were it ſo, the text, directing the relinquiſhment of the remainder, would be unmeaning. When a ſingle copper veſſel or the like has been pawned, ſince a part of it cannot be ſold, the ſale of the whole is neceſſary; and it is neceſſary, that a part of the price (namely the ſurplus) ſhould be relinquiſhed. Nor ſhould it be argued, that, were it ſo, the creditor being owner of a part only, the ſale of the other part would be a ſale without ownerſhip. Like the caſe of undivided brethren, a partial ownerſhip, without property in the whole, is incongruous.

WHAT then is this partial ownerſhip? It ſhould not be called a concurrent property contemporary with the property veſted in the debtor or in his heir: for in that caſe each would be equally entitled to half the pledge. This is conciſely anſwered by eſtabliſhing an ownerſhip, on the authority of the law, in a greater or leſs value, according to circumſtances.

WHEN the king cauſes the property of any perſon to be ſold, what is the law in that caſe? Why does the king cauſe it to be ſold? By an act of

* Book I, v. CXXI 2.

violence;

violence; or for the payment of a fine, or of a debt? In the firſt caſe the ſale is not valid.

X.

MENU:—WHAT is given by force, what is by force enjoyed, by force cauſed to be written, and all other things done by force, MENU has pronounced void.

IN the ſecond caſe, if he do not cauſe the property to be ſold, how can the amercement or debt be recovered? It ſhould not be objected, that there is no occaſion for his making the ſale himſelf, ſince the purpoſe may alſo be effected by ſelling the property through *the* intervention *of the owner*. It is inconſiſtent with ſettled uſage to ſuppoſe an offence in ſelling the property in the owner's preſence, if he refuſe to cauſe it to be ſold. Nor is it void, as a thing done by force; for what is done by force without a *ſufficient* cauſe, is alone void; and fines could not otherwiſe be recovered.

SOME ground the validity of a ſale made by the king, on his being lord of all, as declared by the text, "All ſubjects are dependent, the king *alone* is independent." But, were it ſo, the king's intereſt and the buyer's intereſt in the thing would be equal; and therefore the ſubject's right could not be vindicated: and further, the ſenſe poſitively is, that the ſale of the owner's property ought to be made by the king with the owner's conſent. But, if that owner do not conſent to the ſale of his effects for the payment of a juſt due, let the king compel him to conſent, by blows, or harſh reproof, or other modes authorized by the law. Or, ſhould he perſiſt in his refuſal, a reaſonable puniſhment, for the offence of not aſſenting where aſſent is required, is proper.

BUT if the king, being much hurried, ſell the effects without requiring the owner's attendance, and the owner, afterwards attending, contumaciouſly refuſe to pay what was due, or to acknowledge the validity of the ſale, then that contumacious perſon ſhall be compelled by harſh reproof, or other ſuitable mode, to admit the ſale.

But ſhould he attend and pay what was due, how can the ſale be valid? The king cannot employ violence to render the ſale valid; for an acknowledgment extorted by force would, in this caſe, be void (VIII): that is, it would be void in the caſe of a payment, for which no time was ſtipulated. But, if a period had been ſtipulated, and his conduct be contumacious after the period has expired, what has been already ſaid concerning the ſale of a pledge, is equally applicable to this caſe.

The ſale of a pledge may be valid, becauſe it is a thing actually poſſeſſed; how can other effects, remaining in the owner's houſe, be ſold by the king's permiſſion? It ſhould not be argued, that the ſale is valid, becauſe it is made by a perſon not deſtitute of authority, the king being lord of all, and the text of Menu merely declaring void a contract made by a perſon without authority. Culluçabhatta expounds "a perſon without authority," a perſon not authorized by the father or by the brethren.

XI.

Menu:—A contract made by a perſon intoxicated or inſane, or grievouſly diſordered, or wholly dependent, by an infant or a decrepit old man, or by a perſon without authority, is utterly null.

The law ordains, that the king ſhall not cauſe the property of another to be ſold: but he ſhall enforce payment of a debt, or the like: and the meaning is, that he ſhall induce the debtor to diſcharge it.

How can the property of another, received in pawn, be enjoyed as a forfeited pledge, with the king's conſent, under the words of the text cited in the preceding book (Book I, v. CXX)? and how can the goods of another be ſold by the king's directions, under the authority of another text (Book I, v. CXXII)? For the goods, though actually poſſeſſed, are the property of another.

If the debtor do not redeem the pledge at the ſtipulated time, it is not required that the creditor ſhould keep the pledge; for the law ſhows, that

the debtor's property in it is forfeited by his neglect. Let the creditor enjoy it, or cauſe it to be ſold, previouſly acquainting the king for the ſake of reſpect, or of juſtifying the act. To this conſtruction there is no objection: and if this expoſition be propoſed, it is admiſſible.

If a time were ſtipulated, the ſale of the effects, with the owner's conſent, is valid in law. Therefore it is conſiſtent with the reaſon of the law, that, after the ſtipulated period has expired, ſufficient effects ſhould be attached to provide for the payment of what is due from a perſon who has abſconded, and that they ſhould be ſold after a *reaſonable* delay. But there is a diſtinction in reſpect to land.

Diſquiſition on property in the ſoil.

This earth, created by God, became the wife of Pr̆ĭt'hu; and afterwards, by marriage and otherwiſe, became the property of ſeveral princes.

XII.

Nerafinha purána: — Thrice ſeven times exterminating the military tribe, Parasu Ra'ma gave the earth to Casyapa, as a gratuity for the ſacrifice of a horſe.

By conqueſt, the earth became the property of the holy Parasu Ra'ma; by gift, the property of the ſage Casyapa; and, committed by him to *Cſhatriyas* for the ſake of protection, became their protective property ſucceſſively held by powerful conquerors, and not by ſubjects cultivating the ſoil.

But annual property is acquired by ſubjects on payment of annual revenue: and the king cannot lawfully give, ſell, or diſpoſe of the land to another for that year. But if the agreement be in this form, "you ſhall enjoy it for years;" for as many years as the property is granted, during ſo many years the king ſhould never give, ſell, or diſpoſe of it *to another*. Yet if the ſubject pay not the revenue, the grant, being conditional, is annulled by the breach of the condition; and *the king* may grant it to another.

But if *no ſpecial agreement be made, and* another perſon, deſirous of obtain-

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ing the land, ſtipulate a greater revenue, it may be granted to him on his application. Here reaſoning muſt be adduced. For example, the following; it muſt of neceſſity be affirmed, that the cultivator has not an abſolute property in the land; otherwiſe, the cultivator would take the ſixth part of the produce of unclaimed land, which has been obtained as ſuch by another.

XIII.

YA'JNYAWALCYA:—LET the king, receiving unclaimed property, give half to *Bráhmanas;* but a learned *Bráhmana* may keep the whole, for he is lord of all.

2. AND the king ſhall receive a ſixth part of unclaimed property occupied by any other perſon.

IF the king himſelf receive unowned property any where ſituated, let him give half to *Bráhmanas;* for the word *dwija* or *twice born* here ſignifies the *Bráhmana*, as is ſhown by the ſubſequent expreſſion "he is lord of all;" ſince no twice-born man, except the king and the *Bráhmana*, is lord of all; and MENU declares the dominion of the king and the prieſt over the human ſpecies (XXIV). A learned *Bráhmana*, occupying unowned property, may keep the whole. But any other than a *Bráhmana* or king, occupying unowned property, muſt give a *ſixth part* to the king; and may take the remainder himſelf.

MUST the king, receiving from a ſubject the ſixth part of unclaimed property, give half to the prieſt? The anſwer is, unclaimed property denoting a thing which has no owner, and, when it is occupied by a private perſon, the property by occupancy altering the condition of that thing, the king does not in this caſe receive unclaimed property; therefore half need not be given to the prieſt.

SINCE the word king here denotes lord of the ſoil; and ſince the cultivator, being owner of that land, is *ſo far* equal to the king; he would be entitled to the ſixth part of the unowned property occupied by him. *The anſwer is*, the word king may be explained lord of the ſoil to exclude another king: but a royal

property

property is supposed in the use of the word; the cultivator has a subordinate usufructuary property, not a royal property: and Sri' Cri'shna Terca'lanca'ra thinks there may be, in the same land, property of various kinds, vesting in the king, the subject, and so forth. It should not be objected, if that be the case, why cannot the king give the land to another, in the same year *for which revenue is paid?* Because a seller or giver may, by sale or gift, annul his own property, and invest another with similar property, but cannot create property of another nature (for a sale by a subject cannot create property of another nature, namely royal property;) therefore, usufructuary property being raised by a conditional gift to the subject, the king cannot again create property *in the same thing*, by a gift to another.

But whence is it deduced, that such property vests in the cultivator? There is no proof of it. His property is not by occupancy; for, the king being a more powerful owner, his occupancy cannot be maintained: it is not by sale; for no sale has been made: it is not by gift from the king on condition of revenue; for, were it so, his property would be equal to the king's.

If it be said, the king, satisfied with the receipt of revenue, does not oppose a property by occupancy; the answer is, in that case the property would remain, if the husbandman, not having surrendered that land, stay even in a distant country; and thus the land could not be taken by another person. It is not fit, that, property being established by occupancy while the king was satisfied, he should, afterwards becoming dissatisfied, have power to annul the occupancy or property; for occupancy, having created a property, immediately ceases *to be a mere occupancy;* and property cannot be annulled without the assent of the owner.

Some hold, that the subject is invested with ownership by a gift from the king on condition of revenue. If he go elsewhere and revenue be not paid, the gift is cancelled by the breach of the condition. It should not be objected, that his interest in the land would be equal to the king's; for the king's assent is not *given* in such a form. Thus, the king assenting in these words, "let a subordinate usufructuary property be held by thee, while my property remains in this land, which belongs to me;" such property is created, as is described

by

by the terms of his assent. Nor should it be objected, that in this case property is *not* created, nor is *effect* given to an existent property, but mere possession as of a thing pawned. This would be inconsistent with the explanation of husbandman, as given by CHANDE'SWARA and others; that is, "owner of the field." Nor should it be objected; how can there be property in what is already owned, since property resists a concurrent property? SRI' CRISHNA TERCA'LANCA'RA and others hold, that property prevents concurrent property of the same nature only: and, under the text which declares wealth common to the husband and wife,* the wife has property, even while the husband's title subsists. If it be argued, that, in short, property generally prevents a concurrent property; and the text, which declares wealth common to the husband and wife, merely authorizes her substitution for the duties of hospitality and the like; and the difficulty being thus removed, there is not, in the case supposed, any property vested in subjects: then the husbandman would only receive half the produce of the soil, since the king would be entitled to enjoy the proportion, to which *the owner of* the soil is entitled. If it be argued, that, obtaining the land by payment of revenue, as a wife is obtained by a nuptial gift, he, who raises produce from his own seed, is entitled to that produce: even in that case, as a thing hypotheeated to one person cannot be also hypothecated to another, so possession of land, already possessed by one person, cannot properly be given to another. A specifick agreement should be made, when the land is delivered, that it shall be enjoyed year by year, until a greater revenue be offered by another person.

XIV.

MENU:—HAVING ascertained the rates of purchase and sale, *the length of* the way, the expenses of food and of condiments, the charges of securing the goods carried, and the neat profits of trade, let the king oblige traders to pay taxes *on their saleable commodities:*

2. After full consideration, let a king so levy those taxes continually in his dominions, that both he and the merchant may receive a just compensation for their several acts.

* Book V. v. CCCCXV.

3. As the leech, the ſuckling calf, and the bee, take their natural food by little and little, thus muſt a king draw from his dominions an annual revenue.

4. Of cattle, of gems, of gold and ſilver, *added each year to the capital ſtock*, a fiftieth part may be taken by the king; of grain, an eighth part, a ſixth, or a twelfth.

5. He may alſo take a ſixth part of the clear annual increaſe of trees, fleſh-meat, honey, clarified butter, perfumes, medical ſubſtances, liquids, flowers, roots, and fruit,

6. Of gathered leaves, potherbs, graſs, utenſils made with leather or cane, earthen pots, and all things made of ſtone.

7. A king, even though dying *with want*, muſt not receive any tax from a *Bráhmana*, learned in the *Védas*, nor ſuffer ſuch a *Bráhmana*, reſiding in his territories, to be afflicted with hunger:

8. Of that king, in whoſe dominion a learned *Bráhmana* is afflicted with hunger, the whole kingdom will in a ſhort time be afflicted with famine.

9. The king, having aſcertained his knowledge of ſcripture and good morals, muſt allot him a ſuitable maintenance, and protect him on all ſides, as a father protects his own ſon:

10. By that religious duty, which ſuch a *Bráhmana* performs each day, under the full protection of the ſovereign, the life, wealth, and dominions of his protector ſhall be greatly increaſed.

11. Let the king order a mere trifle to be paid, in the name

name of the annual tax, by the meaner inhabitants of his realm, who subsist by petty traffick:

12. By low handicraftsmen, artificers, and servile men, who support themselves by labour, the king may cause work to be done for a day in each month.

13. Let him not cut up his own root *by taking no revenue*, nor the root of other men by excess of covetousness; for, by cutting up his own root *and theirs*, he makes both himself and them wretched.

Let him levy taxes on traders, who subsist by purchasing commodities cheap and vending them at an advanced price. What taxes? to this the legislator replies, having ascertained the rates at which commodities are purchased, and at which they are sold; and having ascertained the profit, with the charges of travelling, of subsistence, of transport, and of safeguard after importation; let him levy taxes: that is, let him take the due proportion of the sum which remains after defraying all charges. Raghunandana expounds the terms of the text *(yógacshéma)* transport of goods to be imported, and safeguard after importation. Let the king so act, that he also may receive benefit out of the profits of trade *which remain* after defraying charges; and that the merchant may receive just compensation for his labours.

XV.

Parásara:—Let the king gather blossom after blossom, like the florist in the garden, and not extirpate the plant, like a burner of charcoal.

As the florist in the garden plucks blossoms successively put forth, and does not eradicate the flowering shrub; so should the king, drawing revenue from his subjects, take the sixth part of the actual produce: but the maker of charcoal, extirpating the tree, burns the whole plant; let not the king so treat his subjects.

Má'd'hava.

XVI.

XVI.

The *Mahábhárata*:—Let the king gently draw *revenue* from his dominions, as the leech *takes its natural food by little and little.*

The fiftieth part, and other proportions of the profit gained by commerce, muſt be underſtood generally of all profit; for no diſtinction is mentioned.

XVII.

Vrĭhaspati:—Giving a ſixth part to the king, a twenty firſt part to deities, and a thirtieth part to prieſts, a man offends not by applying himſelf to agriculture.

From the concurrence of this text, and no diſtinction being mentioned, this very rule muſt apply to the receipt of a part of the gain in all caſes: and Ma'n'hava places the text of Menu under the title of revenue in general.

"Of grain, an eighth part, a ſixth, or a twelfth:" *Three* rates, primary and ſecondary, for the difference of circumſtances. Conſequently, a greater revenue is permitted in the exigence of diſtreſs. But never ſhall any tax be received from a *Bráhmana* learned in the *Védas* (XIV 7). Shall not the king prevent his cultivating land; and thus there will be no revenue to receive from him? The text deelares it infamous, that ſuch a *Bráhmana* ſhould be afflicted with hunger (XIV 8). Therefore the king ſhould aſſign a ſuitable maintenance to a learned *Bráhmana*, who has not a maintenance already allotted to him. To confirm this, Menu himſelf adds; "the king, having aſcertained his knowledge of ſcripture and good morals, muſt allot him a ſuitable maintenance;" that is, ſuch a maintenance as may exempt him from falling into contempt. Do not the ſubjects pay a ſixth part as a token of reſpect becauſe the king protects them? And, if the *Bráhmans* learned in the *Védas* pay not a ſixth part, ſhall not the king protect him? To thoſe who entertain this doubt, the ſage replies; "the king muſt protect him on all ſides," from thieves and others, not in words merely, but with *exertion of* mind and body, as a *father protects his* ſon.

To

To the doubt abovementioned, founded on the miſtaken notion that ſuch a *Bráhmana* does not give a ſixth part, is it not anſwered, that he, who raiſes produce, or buys and ſells things, gives a part of them; and, as the *Bráhmana*, learned in the *Védas*, acquires merit, of which he gives a part, he alſo muſt neceſſarily be protected by the king?

XVIII.

The divine CA'LIDASA:—THE wealth of princes, collected from the four orders of their ſubjects, is periſhable; but pious men give us a ſixth part of the fruits of their piety; fruits, which will never periſh.*

How does it follow, that *Bráhmanas* learned in the *Védas* give the ſixth part required by the text of VRI'HASPATI? The text cannot be well explained by the gift of a part of the fruits of piety; for that is inconſiſtent with the concurrent gift of a part to deities and prieſts. Some refer the text (XVII) to others than a *Bráhmana*; but that is not the opinion of MA'D'HAVA; for immediately after that text, he mentions the mode in which agriculture may be practiſed by a *Bráhmana*, and quotes a text of MENU concerning the practice of huſbandry by *Cſhatriyas* and others. The difficulty may be thus briefly reconciled; if a *Bráhmana* learned in the *Védas*, for his own juſtification, voluntarily pay revenue, let the king, receiving it, appropriate it to the uſe of deities and prieſts; but, if he pay it not ſpontaneouſly, the king muſt not demand it.

THE ſixth part is explained by MA'DHAVA, one part in ſix. By parity of reaſoning the rule is the ſame in reſpect of the thirtieth part.

XIX.

MENU:—A SIXTH part of *the reward for* virtuous deeds, performed by the whole people, belongs to the king, who protects them; but, if he protect them not, a ſixth part of their iniquity lights on him.

* *Sacontala*, p. 41, Calcutta edition.

UNDER this text, which includes all classes, the king, who protects his subjects, receives a sixth part of *the reward for* virtuous deeds performed by them, although they also pay revenue. What parity is there in comparison with the *Bráhmana* learned in the *Védas*, since the people at large give part both of the wealth and merit acquired by them? It must be understood, that the contribution is equal, or even greater, since a virtuous *Bráhmana* learned in the *Védas*, acquiring great merit, gives *a part of a great reward for* many virtuous deeds. A *Srótriya*, or *Bráhmana* learned in the *Védas*, is thus described;

XX.

DE'VALA:—A PRIEST, who has studied one śác'há of the *Véda*, or one śác'há with the law of sacrifice, or with the six *angas* or bodies of learning, and who performs the six prescribed acts, is named *Srótriya* learned in law.

THE six *angas*, or bodies of learning, are śicshà, *calpa*, *vyácarana*, *ch'handas*, *jyótish*, and *niructi**. The prescribed acts are declared in the following text.

XXI.

MENU:—READING the *Védas*, and teaching *others* to read them, sacrificing, and assisting *others* to sacrifice, giving *to the poor, if themselves have enough*, and accepting *gifts from the virtuous, if themselves are poor*, are the six prescribed acts of the first born class.

LET it not be supposed, that an ignorant *Bráhmana* is not to be respected; for MENU, premising, that a king, though in the greatest distress, should not provoke *Bráhmanas* to anger, declares the danger of provoking even an ignorant *Bráhmana*.

XXII.

MENU:—A *Bráhmana*, whether learned or ignorant, is a

* śicshà, or precepts of vocal form. *Calpa*, detail of religious acts and ceremonies. *Vyácarana*, grammar. *Ch'handa*, prosody. *Jyótish*, astronomy. *Niructi*, on the significations of difficult words and phrases. *Asiat. Researches* vol. I. p. 341.

powerful

powerful divinity; even as fire is a powerful divinity, whether consecrated or popular.

"LET the king order a mere trifle to be paid" (XIV 11) by the meaner inhabitants of his realm (inferior in rank to the priest), who subsist by cultivation and other modes before mentioned, or by handicraft and the like not previously mentioned. Another contribution from handicraftsmen and artificers is mentioned in the subsequent text (XIV 12). Thus some expound the text (XIV 11). But in fact the term, used in the text, intends *petty* traffick and the profession of a singer and the like. In the subsequent text labourers, such as thatchers of houses and others, and artificers subsisting by work in cane and wood, are intended: as a distinction might be supposed between persons subsisting by labour or handicraft only, and persons subsisting by the sale of the produce of their labour, both are mentioned; but in fact the terms are synonymous in the dictionary of AMERA. "By these and by servile men, the king may cause work to be done for a day in each month," employing handicraftsmen and artificers in thatching houses, and in working on cane and wood, and employing *Súdras* on servile labour. It is necessary they should contribute revenue: to lighten the labour, they may pay to the king an equivalent out of wealth gained elsewhere, and the king may hire others for the labour required. Thus, if the attendance of a multitude of artificers be inconvenient from the magnitude of the kingdom, he may levy taxes equal to the value of labour for twelve days in the year.

THE king may levy taxes at such rates; and these rates are directed by the law in times void of distress; therefore he may not exact a greater revenue: but the prohibition against receiving any tax from a learned *Bráhmana*, even in times of distress (XIV 7), implies, that a greater revenue may be received from others in such times. Let him not make himself wretched in the apprehension of transgressing the law, nor anticipating distress, or providing for his own gratifications, or desirous of amassing wealth, make his subjects wretched (XIV 13). Let him not cut up his own root, that is, his life, *by taking no revenue*; nor the root of others by excess of covetousness: such is the construction of the text. The king should preserve

ſerve himſelf for the benefit of others; for he himſelf protects others; and, if he periſh, others would not be protected. On this expoſition, the receipt of greater revenue is improper; but in times of diſtreſs a greater revenue may be taken. Diſtreſs not being perpetual, if a ſixth part of the crop have been ſtipulated at the time of granting the land to the cultivator, no diſtreſs then exiſting, ſhould diſtreſs afterwards ariſe, it is fit, that a greater revenue ſhould be exacted, notwithſtanding that ſtipulation. Such is the induction of common ſenſe.

XXIII.

MENU: — A MILITARY king, who takes even a fourth part *of the crops of his realm* at a time of urgent neceſſity, *as of war or invaſion*, and protects his people to the utmoſt of his power, commits no ſin.

FROM the circumſtances of the times, if confidence cannot be placed in the ſubject, the value of a ſixth part, or other proportion *of the crop*, any how aſcertained, may be taken, whether the actual produce be more or leſs than was eſtimated: this method is authorized by ſettled uſage, and is indicated *by the text*.

OTHERS hold, that the king has no property in the ſoil, nor power to diſpoſe of the ſubject's abode, becauſe all have a right in the ſoil; ſince the earth was created for the ſupport of living animals, as expreſſed in the *Srí Bhágavata*: "*The Earth*, which GOD created for the abode of living creatures;" and becauſe MENU has *only* declared, that the ſubjects ſhall be protected by the king.

XXIV.

MENU: — SINCE the lord of created beings, having formed herds and flocks, intruſted them to the care of the *Vaiſya*, while he intruſted the whole human ſpecies to the *Bráhmana* and the *royal Cſhatriya*.

WERE it ſo, would it not be uncertain how many ſubjects ſhall be protected

tected by what king? To this they reply, that each king shall protect the inhabitants of that country, whereof the inhabitants can be exempted from the dominion of every other person.

But, in fact, without property in the soil, there can be no certain rule for the protection of the subjects. Let it not be said, that the rule above-mentioned suffices; namely, that the subjects are to be protected in such an extent of country as can be withdrawn from the dominion of another; for, should the possibility of excluding another authority be received as naturally included in the definition, a powerful king, who from tenderness omitted to seize another realm, would be criminal in not protecting the subjects of that realm; since he is able to possess himself of it. Nor should it be argued, that the rule directs the protection of subjects in that country, from which other authority is actually excluded; for, other authority any how subsisting therein, it might be supposed that the king was not bound to protect the inhabitants of his own realm, so long as that authority was not exterminated.

If it be asked, what is the rule on your opinion? And if it be argued, that the positive necessity of supposing a proprietary right, and the consequent obligation on the king to protect the inhabitants of that country, of which he is proprietor, should not be affirmed, because such property is not deduced from positive precept; *we answer*, the exclusion of every other authority is naturally implied; and it is positively required, that there be "a right of property co-ordinate with the non-existence of a determination not to exclude other authority." It should not be argued, that the obligation of protecting the subject need only be supposed, for it is troublesome to establish another proprietary right. A king's gift of his realm is mentioned in the *Purânas*, and in other works ("he gave his ancient dominions to the performer of the sacrifice:") consequently a real ownership is vested in the king. It should not be said, the gift, in the instance quoted from the *Purânas*, means a gift of the revenue payable by the subjects of his ancient dominions. The gift could not take immediate effect; for the king's property has no foundation to rest on, since the revenue is not yet paid. Nor should it be said, the property will arise at a future time, from the past existence of the act of

ing, which has only a momentary duration, * as in the cafe of a corrody, where a future property is created. A gift of land by the king is mentioned in a text of YA'JNYAWALCYA (Ch. IV, v. XXXIV); and lord of the earth (*mehipati*) and fimilar regal titles are *often* mentioned.

Is the earth unowned, if the king have no property in it? If it be alleged, that the foil is not unowned, fince the fubject has property by occupancy; it is afked, cannot the king occupy land? The king may alfo have property in the land by occupancy. Therefore the right, both of the king and the fubject, in the foil, is proved upon the concurrent opinions of CHANDE'SWARA, SRI CRISHNA TERCA'LANCA'RA, and many other authors.

PROPERTY muft be diferiminated by occupancy: thus, if another invade the land occupied by fubjects, the king oppofes him; and land is occupied by fubjects with the king's confent. Kings were created by GOD to decide the various conteits between fubjects concerning occupancy and the like, and to maintain juft proceedings: therefore the king, as lord of his fubjects, is called lord of men (*nerapati*). By his own power, the king prevents others from feizing the land over which he has dominion; by his own power, he legally feizes the land over which others reign: therefore he is not fubordinate to the fubject.

IF a potent fubject be able, independent of the king, to refift invaders, and even to feize the lands of others; fhall his property be deemed independent of the king? No; for that fubject ought to be punifhed by the king, if he tranfgrefs the law: but, if the fovereign be not able to inflict punifhment on him, even he is king.

ANY king, who pays tribute to a foreign prince, is nevertheleis a king, if he do not furrender his regal power. But a perfon, who receives a village from the king, undertaking to pay the revenue of it in the expectation of benefit to himfelf, is an intermediate owner between the king and the fubject.

THIS earth therefore is the cow which grants every wifh; fhe affords

* This alludes to philofophical reafoning on the relation between cauie and effect.

property

property of a hundred various kinds (inferiour, if the owner need the aſſent of another proprietor; ſuperiour, if his right precede aſſent;) while ſhe deludes a hundred owners, like a deceiving harlot, with the illuſion of *falſe* enjoyment: FOR, IN TRUTH, THERE IS NO OTHER LORD OF THIS EARTH BUT ONE, THE SUPREME GOD.

THE ſubject's property in the ſoil is weaker than the king's, for the ſubject is weaker than the king; but it is founded on the reaſon of the law, and on ſettled uſage: therefore the land of one ſubject ought not to be ſold by the king to another. But how can this ſale be ſale without ownerſhip, ſince the king is owner of the land, as well as the ſubject? It ſhould not be affirmed, that the ſale, made by one who holds not ſuch property as is conveyed by the ſale, is ſale without ownerſhip; for this is inconſiſtent with the opinion of thoſe, who contend for a property in the ſubject dependent on a grant from the king. Thus, according to that opinion, the ſubject's property is founded on a grant from the king, as ſuperiour lord. But what difference is there, in the effect of a gift or ſale? According to the opinion, wherein it is contended, that the ſubject's property depends on the gift of the king, *ſo long as the* inferiour property is not granted, the land has only one owner: afterwards, a double property ariſing, an owner may annul his own property, but not the property of another perſon: elſe, why could not the ſubject annul the king's property by ſelling his own land? Accordingly, the ſpecifick aſſent of the owner being the cauſe of annulling property of the ſame nature, the king cannot annul an inferiour property: and this very maxim may be maintained on the opinion even of thoſe who contend for a property by occupancy, on the authority of the text which deſcribes the earth as the abode of living creatures. According to this opinion, wherein property by occupancy is maintained, if any ſubject, occupying land, after ſome time go to a diſtant country without ſurrendering the land, can no other perſon take the land; ſince, without his ſurrender of it, his property is not annulled? The meaning of the text, which deſcribes the earth as the abode of living creatures, is poſitively this; the property is his, who uſes the land, where he reſides, and while he uſes it: and thus, when land belonging to any perſon is ſold by the king, it is a ſale without ownerſhip.

XXV,

XXV.

CATYA'YANA:—LET the judge declare void a ſale without ownerſhip, and a gift or pledge *unauthorized by the owner.*

IT muſt be underſtood from the proximity of the terms, that the gift or pledge is made by one, who is not owner of the thing. Or the ſuffix is omitted for the ſake of the metre. "Declare void," that is, the buyer having received back the price, the owner recovers his chattel.

XXVI.

NA'REDA:—THE owner, finding a thing which had been ſold by a ſtranger, ſhall recover it.

"FINDING;" the term is ſo explained in the *Retnácara.*

THE owner ſhall recover his own property ſold by a ſtranger, or one, who is not owner of it: blame is imputable to the buyer; it is imputable to him becauſe he bought not publickly, *but bought the chattel* without acquainting the king or his officers (XXXVII). If it had been ſtolen by a thief, he muſt *reſtore the chattel,* if the thief be not found; as will be ſubſequently noticed.

XXVII.

MENU:—A GIFT or ſale, thus made by any other than the true owner, muſt, by a ſettled rule, be conſidered, in judicial proceedings, as not made.

HOW is it called a ſale, for the word "ſale" implies the act of annulling former property upon the receipt of a conſideration; now the former property cannot be annulled by the act of a ſtranger? The word "ſale" is here employed in a ſecondary ſenſe, denoting the delivery of a thing, with the previous receipt of a conſideration.

BUT ſome argue, that ſale is the act of aſſenting to the annulling of former property, with the previous receipt of a conſideration; and even gift is the

the assenting to the annulling of former property, but without the receipt of a consideration: and this, they hold to be the sense of the verbs sell and give. Thus, by the authority of the law, in the case of a perfect gift or sale, the property of the former owner is annulled by his assenting to the annulling of it: but, in the present case, the former property is not annulled, though such assent be given, *but given by a stranger;* for a stranger's assent cannot annul property: on the contrary, the giver, or seller, shall be punished. The owner's assent to the annulling of his own property is the cause of *his* property being annulled; and *his* assenting to another's property is the cause of another's property; not generally any assent to the annulling of former property, and any assent to the raising of a property in another: for the cause and effect would be interchangeable. Thus, on that opinion, the gift or sale is truly the cause of annulling a *former* property and investing another with it: because gift is the assenting to vest a property in another, *thereby previously* annulling *a former* property; and sale is the same, but with the previous receipt of a consideration.

This opinion is contradicted, because it would be inconsistent with the text; "a gift or sale, thus made, must be considered as not made" (XXVII). When a gift or sale subsists, though the assent was given by a stranger, how is it considered as not made? With reference to this question, authors write, that gift is a relinquishment producing the effect of vesting property in another after annulling one's own property.

In the gift of another's goods, there is not such a relation between cause and effect, as can produce a *real* gift: nor does the law express, that fruit is obtained by the gift of one's own property; for "his own" is not specified in the text, "he, who gives land, obtains land." It therefore follows, that "not made" (XXVII) may be explained, similar to *a gift* or *sale* not made, in as much as it produces no fruit. Another exposition will be mentioned in the fifth book on inheritance. The conjunctive particle, in the text of Ca'tya'yana (XXV), is employed to comprehend things not mentioned, namely barter and the rest. Consequently the sense in effect is, 'by the assent of one, who is not owner, another has neither right of property nor of possession.'

What is the rule, if the land of a subject be sold by the king? Why does the king sell it? Does he sell it by an act of violence, or to recover an amercement or the like? In the first case, it is null (X): and, according to the opinion of those who hold, that the king, and not the subject, has property in the soil, there is no sale in the case supposed; for there is no former owner but the king; and the king, selling the land, does not relinquish his own right: therefore, to give possession to another occupant, and to remove the former occupant after satisfying him, some consideration must be given; if he, being satisfied, accept it, in that case there is no dispute; but if he refuse it, possession, given to one, of a thing already possessed by another, is invalid, like the hypothecation of a thing which was already hypothecated to another person.

XXVIII.

Ya'jnyawalcya:—In all *other* contested matters, the latest act shall prevail; but, in the case of a pledge, a gift, or a sale, the prior contract has the greatest force.

It should not be argued on the superiour force of the earliest contract as thus ordained by Ya'jnyawalcya, that it may be true of pledges; but the superiour force of the latest act should be affirmed in this case. The parity of this case and of the case of a pledge is reasonable: otherwise, why should not the king daily grant the same land to various subjects? Nor can this objection be reconciled to the law. This separate head of judicial procedure being adopted, because the delivery of land by the king to the subject is not included under the head of contests on boundaries, the law of pledges must be extended to it, by parity of reasoning. Or it may be answered, such a bad exposition should not be admitted. Every forcible act is void: but if force be not employed in this case, *the act is valid;* for every man has legal capacity for a gift or sale of his own property. But it would follow, according to the opinion mentioned, that the seeming sale of the subject's land by the king is valid: the subject therefore does not receive its price; it is received by the king *in his own right:* and in that case, an amercement is not recovered from the subject *by a sale of land;* and the king incurs a taint of sin. But, on the other opinion, a sale forcibly made by the king is void.

In

In the ſecond caſe *(where land is ſold to make good an amercement or the like)*, according to the opinion, wherein the king's ſole property is maintained, the amercement is not recovered; as has been already mentioned. According to the other opinion, there is no *expreſs* ordinance for the ſale of land belonging to ſubjects, who are miſſing, after the period for *the* recovery *of what is due from them* is paſſed; but the reaſon of the law *authorizes the ſale*, ſince an amercement or the like could not otherwiſe be recovered: therefore the king ſhould afterwards compel the owner to conſent. But, if the owner be preſent, the ſale ſhould be made with his conſent; or, if he withhold his conſent, then other puniſhment is proper: but, ſince puniſhment cannot be inflicted on abſent perſons, it is fit their property ſhould be ſold. When the ſale has been completed by the king, and the ſubject immediately attends, bringing the amount *due from him;* then indeed the ſale made by the king is void, for the owner's property is not forfeited. The king cannot forcibly compel him to admit *the ſale*, ſaying; "this property has been delivered by me to ſuch a perſon; thou muſt therefore confirm the ſale, for I will not accept the amount." But, if the owner do not then attend, this ſale *aſſumes* the form of a puniſhment for his offence. Elſe, inflicting other puniſhment let the king releaſe his property. Thus ſome *expound the law*. It is declared more fully under the title of conteſts on boundaries. To enlarge in this place would be ſuperfluous.

It has been ſaid, that the buyer ſhall receive back the price paid, and the owner ſhall recover his property: ſhall the owner repay the price?

XXIX.

YA'JNYAWALCYA:—*The buyer* is juſtified by producing the ſeller: the owner recovers his property, the king receives a fine, and the buyer receives back the price, from him, by whom the thing was ſold.

The text has been already expounded in the firſt book on loans and payment (Book I, Ch. II, Sec. III, Art. III).

According to the opinion of 'SU'LAPA'NI, the buyer is juſtified by

producing the ſeller; and the owner recovers, or obtains poſſeſſion of, his own property. According to VA'CHESPATI BHATTA'CHA'RYA, he recovers the right of property. A thief having acquired a property by occupancy, the owner's property has been annulled, but is now revived under the authority of the text; "the owner recovers his property."

FROM whom does the king receive a fine? From the perſon ſubſequently mentioned, namely him, by whom the thing was ſold; and the buyer receives back the price from the ſame. The property in the thing is revived, like property annulled by the ſemblance of a gift.

THIS text being placed under the title of ſale without ownerſhip, and the expreſſion, "the owner recovers his property," not being otherwiſe pertinent, the text muſt be underſtood as intending ſale without ownerſhip.

XXX.

VRIHASPATI:—WHEN the ſeller has been made appear, and has been condemned in the law ſuit, let the judge cauſe him to pay the price to the buyer, and a fine to the king; and reſtore the property to its owner.

WHEN he has been condemned in the law ſuit, (when it is proved, that he ſold the thing, and was not the owner;) he ſhall be compelled to repay the price &c. not, upon a ſimple aſſertion.

HERE, payment of the price to the buyer being required, what price ſhall be paid? The price actually received; or the preſent value of the thing?

XXXI.

NA'REDA:—*In* a caſe of ſale without ownerſhip, the ſeller muſt reſtore the thing to the owner; and pay to the purchaſer the price for which it was ſold, and a fine to the king, as directed by law.

THIS

THIS contradicts the childish supposition, that the buyer is entitled to the thing; and the owner, to the price only: for the sale is void. "The price for which it was sold;" the price agreed on at the time of the sale and received by the seller. If any person steal and sell a cow, and afterwards the owner, seeing the cow, claim her; when the price is to be repaid to the buyer, that very price shall be recovered, though the value may have been diminished by the cow being worn by age: shall not the price be therefore recovered, even though the cow have died, if the purchase be proved by evidence; for the buyer has a right to the price, since it was a sale without ownership? *It may be so:* but this distinction, founded on the reason of the law, is justly inferred; if the cow become useless by age, still the real owner must receive that very cow, and the buyer receive the price he paid; but if the cow become useless, through the buyer's fault, from want of food, or from excess of labour, the buyer must receive less than the price, and the difference must be paid to the owner of the cow: it is not the seller's gain. If the cow have died by mere accident, the recovery of the price is the buyer's gain, and the owner shall not obtain a cow from the buyer; for his cow is lost to him, and the law does not show that any equivalent shall be given. This is pertinent on the opinion of SU'LAPA'NI.

But sale without ownership is established with difficulty on the opinion of those, who assert, that a thief has property in the thing stolen; for, *according to that opinion*, a thief has ownership. It is thus *reconciled:* the thief's ownership ceasing when the cow is recognized by the real owner, it then becomes sale without ownership. If it be so, is not every sale a sale without ownership? For all sellers, by the act of selling, become non-owners; since perpetual ownership, *even after alienation*, is no where admitted. Nor should it be argued, that "owner" may be here understood in the triple sense of actual owner, of him who annuls that ownership by sale or the like, and of him who was not previously the owner: for property is annulled by a sale made even by a thief. To the question thus proposed, the answer is, No; for there is no difficulty in supposing an owner different from a thief to be positively intended by the word "owner," in the expression sale without ownership, *or sale by one who is not the owner.* Of what use is this supposition? For the difficulty may be removed by not admitting the thief's ownership:

and the objection is answered by asking; how can property arise without acquisition by an owner? The following text shows that property does vest in a thief.

XXXII.

NA'REDA and the *Vishnu-dhermóttera*:—WHAT is acquired by servile attendance, gaming, theft or the like, or by disguise, robbery, or fraud, all that is called property.

FORMER owner *or possessor*, in a text which will be quoted from VRĬHASPATI (XXXIII), must have some meaning: but, if thieves have not ownership, the word "former" would be unmeaning, since there would be nothing to which it could be opposed. Accordingly, if a person, having bought at a high price effects stolen, is dissatisfied *with his purchase*; and, after the period limited by law *for the rescission of purchase*, discovering, that this sale, having been made by a stranger, is void, wishes to return the thing; it is not to be returned, even though the owner of the thing, who had not disposed of it, be dead. Such is the rule laid down by VA'CHESPATI BHATTA'CHA'RYA. According to his opinion, if a cow, which had been stolen and sold, die, it is lost to the buyer; for it is the loss of a thing possessed by him as property: therefore, in that case, he shall receive the price *from the seller*, on delivering an equivalent *to the former owner*; and, in the case of a thing stolen, the former owner receives an equivalent, under the authority of the law, if the original thing be lost.

BUT, according to the opinion of SU'LAPA'NI, property, in the text of NA'REDA (XXXII), intends the power of disposing of the thing at pleasure; and the word "former" is employed in the text of VRĬHASPATI, in opposition to the thief and the buyer, who are secondary owners, in as much as they perform acts of ownership. It is a bad rule, in the case of effects stolen and sold, that a buyer, discovering the theft and desiring to return the effects, may not return them. Thus a buyer discovering the theft, and desiring to restore the effects, but forbidden by the king or the arbitrators, keeps the effects and returns to his house; after some days, the owner comes and claims the effects, and the thief, who had clandestinely sold them, is dead; in this

case

case the effects are the former owner's, and the buyer, though not in fault, would be a loser by restoring the effects without receiving the full price. He does not incur blame, wherefore he should lose half the price, as in the case even of a thing publickly bought; for, on discovering the theft, he was willing to return the effects.

Some hold, that there is no difficulty, if the producing of the seller (XXIX) be explained discovering the theft of the seller, that is, making it known to the king's officers, or to arbitrators or the like. Therefore, in this case, the buyer, *informing* the king that the seller is a thief, may recover the price. No difference results from the two opinions: but, the text of Na'reda being the sole ground for admitting *such* property, the practice, exhibited in explaining the opinion maintained by Va'chespati bhatta'cha'rya is bad. Is there not a difference in the result of these opinions; since, according to Su'lapa'ni, it is not the buyer's loss, if the cow, which had been stolen and sold, die; for it is not the accidental loss of what was possessed by him as property: but, according to Va'chespati bhatta'cha'rya, it is the buyer's loss; for it is the loss of what was possessed by him as property? No; for, the sale being null, because it was a sale without ownership, it is fit, even on the opinion of Va'chespati bhatta'cha'rya, that the loss should fall on the thief. Consequently, the cow being dead, there is no present opportunity of investigating the property; but, the price not being lost by *the same* accident, the buyer has a right to it. According to the opinion of Va'chespati bhatta'cha'rya, if the price of the thing sold be fortuitously lost, and it afterwards appear to have been a sale without ownership, is it not improper to investigate the property and require compensation, since the money is lost? Even according to the opinion of Su'lapa'ni, is not the thief unaccountable, since it was lost, while it *yet* belonged to the buyer? and, in a similar case, if the cow be living, shall she not be received back by the thief, since the sale is void, being made without ownership? If a thing, bailed to an artist, and not restored by him, be lost by accident, it is the owner's loss; for there is no fault in the artist: but if it be lost after the stipulated period *for repairing it &c.* it is the artist's loss; for his exceeding the stipulated time is a fault (Chapter I, v. LIII). So the thief, committing a crime by selling

ſelling the goods of another, muſt repay the price even though the goods be loſt: but, if they were bought with previous knowledge of the theft, the price of thoſe goods, ſhould they be loſt by accident, is not to be repaid; for both are criminal. Even in the caſe of the death of a cow, which had been ſtolen and ſold, the owner ſhall recover an equivalent from the thief; for he is criminal, as an artiſt, who exceeds the ſtipulated time, is faulty. If it be ſaid, the thief is criminal in regard to the owner, becauſe he may be thus accuſed; "wherefore has my cow been delivered to another?" But how is he criminal in regard to the buyer, to whom he delivered the cow; for he made a contract, receiving the price on the delivery of the thing? Even the buyer can arraign him. For example: "he is diſhoneſt in having taken my "money, giving me another's property, which cannot long remain, and "which is *therefore* unfit for my intended uſes: why did he not keep it "at home?"

THIS opinion ſhould be received as the ſettled rule: the ſeveral opinions, previouſly noticed, were mentioned for the ſake of illuſtration. To enlarge would be ſuperfluous.

SECTION

SECTION II.

ON THE PRODUCTION OF THE SELLER AND JUSTIFICATION OF THE BUYER.

XXXIII.

VRĬHASPATI:—WHEN the former poſſeſſor ſhall come and prove his property in the thing bought, let the purchaſer produce the ſeller; for thus may he clear himſelf.

THE *Retnácara* explains "the former poſſeſſor," the perſon who was owner of the thing before the theft, or who had power to diſpoſe of it at pleaſure: "the principal" here ſignifies the ſeller. The legiſlator means the principal in the ſale.

XXXIV.

YA'JNYAWALCYA:—HE, who has purchaſed *the* goods *of another* which had been loſt or ſtolen, muſt, *when accuſed by the owner*, cauſe the thief, *or other perſon who ſold them*, to be apprehended: but, if *circumſtances of* time or place prevent *his apprehenſion*, the buyer muſt himſelf reſtore the goods.

HE, who has acquired, or obtained by purchaſe or the like, the goods of another loſt and ſeized or ſtolen, being accuſed by the original owner (*this* ſhould be ſupplied in the text), muſt cauſe the man, who ſtole them, in other words, the man who ſold them, to be apprehended by the king's officers. He muſt cauſe him to be ſeized. But if he cannot cauſe him to be apprehended, being prevented by circumſtances of "time or place," that is by the death or abſconding of the ſeller, or the like; in that caſe, the buyer muſt himſelf reſtore the goods, when the owner's property in them is proved. Such is the expoſition approved by CHANDE'SWARA. "Cauſe to be apprehended"

explained by ſome, ſhow *or point out*; for the verb *grah*, take, is uſed in the ſenſe of know.

THE goods muſt be thus reſtored, without *receiving back* the price, if the purchaſe was privately made; but not ſo, if the purchaſe was openly made.

XXXV.

CA'TYA'YANA:—EITHER let a man make an open purchaſe *in an aſſembly of people*, or let him produce the ſeller; but let time be given him for the production of the ſeller according to the number of *yójanas*.

2. HAVING offered to produce the ſeller, if he afterwards tender proof of a fair ſale, let the judge require the production of the ſeller; there is no uſe of ſuch proof *of a fair ſale* by the defendant, *who firſt offered another juſtification*.

BY proving an open purchaſe, or by producing the ſeller, let the buyer vindicate his innocence.

CHANDE'SWARA.

CONSEQUENTLY the alternative of an open purchaſe and production of the ſeller denotes mutual oppoſition. It follows, that the ſame exemption from making good the effects himſelf, which the buyer obtains by producing the ſeller, is alſo *allowed* in the caſe of an open purchaſe. Let him prove his innocence, and therefore be exempt from penalties.

"AN open purchaſe;" a purchaſe known to arbitrators and to the king's officers. "Let time be given him for the production *of the ſeller*:" if the ſeller reſide in a diſtant country, he cannot be produced at the inſtant; let time be allowed for that purpoſe, and let the recovery of the thing be ſo long deferred "According to the number of *yójanas*:" let ſo much time be given, as is requiſite to travel, going and returning, ſo many *yójanas*, as is the diſtance to the ſeller's reſidence.

" HAVING offered to produce the seller, &c." (XXXV 2): the buyer, when first accused, having said, " I will produce the man, from whom I received the thing," afterwards says, " many persons know of my purchasing it;" in that case, his first and second plea differing, on which plea shall the decision rest? To that question the answer is this; " there is no use in his proving an open purchase;" that is, upon such proof, he will not be held innocent: *let the judge* require the production of the seller. This interpretation agrees with the *Retnácara*.

IT must be considered, that the text provides against dishonesty. Therefore, if the buyer, first undertaking to produce the seller, go to fetch him; but the seller happening to be dead, the buyer returns, and says, " the seller is dead, but all the witnesses named know, that the thing was bought from him;" in that case, if all the circumstances be proved, the decision must depend on the fairness of the sale: but, otherwise, it depends on the production of the seller.

ACCORDING to VA'CHESPATI MISRA, the text merely exhibits the natural inference. Thus, when the buyer says, " I bought this thing of DE'VADATTA, and all know the purchase and the commodity bought:" the seller must be apprehended, for thus may the sale be proved. But, if the seller be not forthcoming, the justification of the purchase must depend on its publicity: and, according to this opinion, the necessity of proving a fair purchase surely follows in case of the seller's death, as abovementioned.

IF the buyer first plead, that the sale is publickly known, and afterwards offer to produce the seller, how is the law settled in this case? Since the text requires the production of the seller, when the sale is pleaded after offering to produce the seller, and since the circumstances of the case are here reversed, therefore proof of a fair sale should be required.

IF it be argued, that the reason of the law shows the production of the seller to be requisite in all cases, for MISRA *says*, it is by producing the seller, that a fair sale may be proved; but, according to the *Retnácara*, the first plea should be tried: some reply, that the result of the different exposi-

tions

tions of both authors is the ſame: and it ſhould be ſo admitted; thus, if the ſale be firſt pleaded, and the production of the ſeller be afterwards offered, both proofs ſhould be received; for there is no ordinance for rejecting either proof; nor is it conſiſtent with the reaſon of the law.

WHAT ſhall be the deciſion, if the defendant, failing in one proof, ſucceed in the other? The defendant, any how clearing himſelf from ſuſpicion of theft, gains his cauſe, and this may be effected by either proof. By failure in which of them could his ſucceſs be prevented, ſince both are ſeverally declared by the law to be *admiſſible* proofs in juſtification of purchaſe?

WHAT is the mode of proceeding, when a real thief, employing various methods to conceal the theft, advances ſeveral pleas at ſeveral times? In reply it is aſked, how is the theft aſcertained, unleſs he fail in the proofs required by the law? If it be ſaid, this is inconſiſtent with the expoſition of the text of CA'TYA'YANA according to the *Retnácara*, for proof of a fair purchaſe is in ſuch caſe pronounced inadmiſſible, it is anſwered, the expoſition of the text ſhould be conſidered as ſuppoſing knavery: therefore, when knavery is obſerved, the cauſe muſt be tried on the firſt plea: but if no knavery appear, it may be tried upon any of the pleas: ſuch is the true ſenſe of the text according to the *Retnácara*; and the production of the ſeller and the proof of a fair ſale are not excluſively intended by the text.

HERE it ſhould be noticed, that, when the cauſe is tried, if the defendant be able to write, the judge ſhould require all his pleas in writing and a written declaration, that he has no other plea: afterwards, ſhould he offer another plea, he is evidently diſpoſed to knavery. This we hold to be proper.

XXXVI.

MENU:—HE, who has received a chattel, by purchaſe in open market, before a number of men, juſtly acquires the abſolute property, by having paid the price of it.

THE place, where things are ſold *(vicrîyanté)*, is the market *(vicraya)*: he, who there buys a ſaleable commodity in the preſence of perſons tranſ-

acting any business, thereby justly acquires the absolute property, justified by purchase from one who sells without ownership, because the seller receives the price from him. So CULLŪCABHATTA, who reads, in the third measure of the verse, *visudd'ham hi* instead of *visudd'hah syât*. He makes it evident that the word *vicraya*, formed on a suffix denoting locality, signifies a market. He considers this text as bearing the same import with the text of MARI'CHI (LV). "Received by purchase:" purchase *here* intends receipt of a thing for a price paid under the name of purchase.

IT appears from this interpretation, that the buyer is not faultless, if the purchase was made in any other place than an open market, and before credible persons, who are not officers employed by the king. But simple men thus interpret the text; "He, who has received a chattel, by sale, as the cause *of receipt*, before a number of respectable persons, is justified by the known open purchase, and legally acquires the property." The suffix of the word *visuddha* is in the neuter sense. But, reading *visuddhatwam* instead of *visuddham hi*, the sense is obvious. In the text (LV), a place of trade is mentioned approximately; for sales and purchases can hardly be transacted any where but in a place of trade: and thence it is deduced, that a purchase secretly made, in a man's own house or the like, is defective. The word *cula*, signifying a number of persons of the same rank, in this text conveys a limitation: consequently men equal in rank, being respected persons, are meant. The term is explained by AMERA genus, or multitude of similar beings. It is used by accurate speakers in the sense of near neighbours. According to this opinion, a purchase, any where made before respectable persons, is an open purchase; and there is no fault in the buyer. Consequently the meaning is this; neither the defect of a private purchase grounded on the want of evidence, nor the suspicion of having purchased the chattel knowing it to have been stolen, exists in the case of a purchase made before respectable persons: and, if a purchase, made after registering the name of the seller and of his ancestors to the third generation and his place of abode, be faultless, and not otherwise, then it is proper, that the purchase should be made in the presence of the king's officers; and, the king's officers being stationed for the *government of the* country at large, it is proper, for the purpose of avoiding much trouble, that the purchase be

made in a place, where many purchaſes and ſales are tranſacted, namely in a market. But no ordinance appears to prove this clearly. The difference between the two opinions ſhould be fully examined by the wiſe.

CHANDE'SWARA reads, "he is juſtified by the purchaſe" *(ſa viſudd'has tu)*, and explains the text (XXXVI); "He, who receives a chattel, in open market, before an aſſembly of reſpectable perſons conducting judicial procedure, is legally juſtified by the purchaſe, and obtains the property *from the ſeller*." Conſequently, according to his opinion, the rule does not direct the purchaſe to be made before the king's officers, for arbitrators, as well as officers employed by the king, conduct judicial procedure, ſince this term denotes the trial of cauſes; and the epithet of reſpectable would be ſuperfluous, if king's officers were intended by CHANDE'SWARA in the expreſſion, "conducting judicial procedure;" for perſons not reſpected are not appointed by the king to be his officers: their appointment would be uſeleſs, ſince ſuch perſons are not capable of conducting affairs. Neither is the ſuperiority of king's officers, appointed for other buſineſs, above principal *Bráhmanas* and the like, conſiſtent with the reaſon of the law; and the ſame ſenſe is intended when perſons conducting judicial procedure are mentioned, as when king's officers are ſpecified.

WHY not rely on the derivation of the word in the ſenſe of locality. This objection is not proper; for derivatives in this form, from words of this claſs, are regularly uſed in another ſenſe. But, if that derivative ſenſe be admitted in the apprehenſion of the word being otherwiſe ſuperfluous, ſale is inferred from what follows. Conſequently, market is mentioned as an inſtance only; if a purchaſe be made before principal perſons, there is no diſtinction, whether it be in a market or in any other open place; and, according to this opinion, the text muſt be ſupplied, "he is legally juſtified by *the fairneſs of* the purchaſe." But practice, in ſome places, juſtifies any ſale made in the midſt of the town, and in the preſence of reſpectable perſons.

IT muſt be conſidered, that the king's officers are few, and reſpectable perſons are ſurely numerous in every town. Conſequently, if it be

be directed, that every ſale be made in the preſence of *thoſe few perſons*, they become in a manner acquainted with the ſellers by frequently ſeeing them: but, if made in preſence of many different perſons, theſe, being only now and then preſent at ſales, do not become acquainted with the perſons of ſellers: therefore it is proper, that purchaſes be made before the king's officers. If the king, conſidering this, forbid ſales to be otherwiſe made; then, conſidering the king's command as cogent, this form ſhould be obſerved, without queſtioning whether it be, or be not, ordained by the law; and, if the buſineſs of buying and ſelling be not obſtructed by this formality, then alſo it ſhould be obſerved. To expatiate would be ſuperfluous.

XXXVII.

YA'JNYAWALCYA:—THE owner ſhall recover his property ſold by a ſtranger: blame is imputable to the man, who buys not publickly; and he incurs the guilt of a thief, if he buy from a very low man, in a ſecret place, at a very cheap rate, and at an improper time.

IF the purchaſe be clandeſtine, blame is imputable to the buyer: ſuch is the conſtruction. "If he buy from a very low man" &c. is a diſtinct phraſe. CHANDE'SWARA thus comments on the text; "from a very low man" not likely to be the owner of that chattel; "at an improper time," not at the proper hours of ſale. Conſequently he, who buys from a very low man, clandeſtinely, at a very cheap rate, diſregarding *proper* time, is a thief: ſuch is the ſenſe of the phraſe.

IS a purchaſe, made under any one of thoſe circumſtances, puniſhable as a theft; or a purchaſe, made under all thoſe circumſtances? Not the firſt; for "in a ſecret place" would be ſuperfluous, ſince the ſame reſults alſo from the preceding phraſe; and even a purchaſe made before the king, at an improper hour, would be criminal. Not the latter; for a purchaſe made at a proper time, even though at a very cheap rate, from a very low man, and in a ſecret place, would be faultleſs. To the queſtion thus propoſed the anſwer is, this half of the text ſhows defects incident to purchaſe though proved; therefore each of the circumſtances mentioned are cauſes of defect. "In a

ſecret

ſecret place, at an improper time," are diſtinguiſhed; therefore a purchaſe, made in the middle of the night, even in the preſence of the king's officers, is defective: for even thoſe officers are not reſpectable, conſenting to the ſale of effects which they know to have been ſtolen. A ſecret purchaſe is therefore ſeparately mentioned to denote ſuch a diſtinction.

It muſt be conſidered, that there is no offence, if it be fully aſcertained by five reſpectable perſons, that the thing was given to this low man by ſome conſiderable perſon; and, if urgent neceſſity be fully proved, there is no offence in a voluntary ſale, even at a very low price; nor is there any offence on the part of the buyer, even though the purchaſe be made in the middle of the night, if the thing was thus ſold from apprehenſion of the ſeller's kinſmen, but in the preſence of honeſt and reſpectable perſons: and, even in the caſe of a purchaſe privately made, if the ſeller acknowledge the ſale and the buyer's innocent intention, there is no offence. The king, from his own judgment, ſhould apply to each caſe, what agrees with the reaſon of the law; for, "if no deciſion were made according to the reaſon of the law, there might be a failure of juſtice."

XXXVIII.

NA'REDA:—He, who buys any thing from a ſlave, without authority from his maſter, from a man not of a good character, in private, at a very low price, and at an unfit hour, becomes an accomplice of the man, who ſtole it.

If a ſlave, intruſted with a chattel for tranſport or cuſtody, having it in his power, ſell it, he is a thief; and ſo is the buyer alſo: but if the owner authorize the ſale, there is no offence. It muſt be conſidered, that, on whatever occaſions (for the ſupport of the family or the like) a debt, contracted by a ſlave, would be payable by his maſter, the ſale of his maſter's property, for the ſame purpoſes, is valid. The expreſſion, "without authority from his maſter," intends a caſe not attended with ſuch circumſtances: and the ſame ſenſe ſhould be aſcribed to the text of MENU: "*A contract made by a perſon without authority is utterly null*" (XI).

" SLAVE" is here employed in the general ſenſe of any dependent perſon; therefore a purchaſe, made from a ſon or the like, is defective: but, if a man buy, with the knowledge of the owner's having authorized the ſale, there is no offence.

XXXIX.

CA'TYA'YANA:—THE defendant, not clearly proving an open ſale to him, or not pointing out the ſeller, ſhall be made to deliver the thing claimed and to pay a fine.

JUSTIFICATION of the purchaſe conſiſts in the proof of *an open* ſale. He ſhall be made to pay a fine, as a thief. In this caſe, the buyer is not juſtified; MENU propounds the fine, which the king receives, as declared in the text of YA'JNYAWALCYA (XXIX).

XL.

MENU:—IF, indeed, he be a near kinſman of the owner, he ſhall be fined ſix hundred *panas*; but, if he be neither his kinſman nor a claimant under him, he commits an offence equal to larceny.

" SHALL be fined" *(avahárya)*; ſhall be amerced. " A near kinſman of *the owner* himſelf" *(ſwánwaya)*; a ſon or other *near* relation of the owner. " Six hundred;" *panas* muſt be underſtood. " Not his kinſman;" not related to the owner. " Not a claimant under him" *(anapaſara)*; not having taken it *by authority of a kinſman*: the taking of it is the removal *(apaſara)* of it from the houſe of the owner. Hence he, who ſells the property of another, being related to him, ſhall be fined ſix hundred *panas*: but, if that ſeller be neither related to the owner, nor become, through a kinſman of the owner, receiver of that chattel taken from the houſe of the owner, but himſelf be the taker of it, he ſhall be puniſhed as a thief: if the embezzlement of the chattel be the act of another, and the ſeller be unallied to the owner, he ſhall be fined even in a larger ſum than ſix hundred *panas*.

" A FINE ;" an amercement of six hundred *panas*. He shall be fined; a fine shall be levied *(avahárya)* on him. The etymology of the term *swán-waya* is, 'he, in whom there is a relation *(anwaya)* with *the owner* himself *(swa)*;' that is, a son and so forth, including brothers and the rest; for it is so declared by CULLU'CABHATTA. A seller, into whose hands the chattel had not been removed or transferred from the house *of the owner* by another who is kinsman of the owner; such a seller, *ucsay*, not being related to the owner, commits an offence equal to larceny. If the sale of a chattel transferred into his hands by a son or other kinsman of the owner be made by one not related to the owner, he shall be punished in another mode: on this a question arises, to satisfy which the commentator adds, 'if the embezzlement be the act of another, and the seller be unallied *to the owner* (for the sign of the privative " a" must be understood), he shall be fined even in a larger sum than six hundred *panas*.' By the particle 'even' it is intimated, that a larger fine than six hundred panas is founded on the reason of the law. According to this opinion, the rule concerning a sale without ownership by one unallied to the owner is two fold.

BUT the author of the *Calpateru* says, that, by which a thing departs *(apasarati)* or *is transferred*, is a claim or title *(apasura)*, as acceptance and so forth: he, who has not such a claim or title, is not a claimant under the owner. If the property of another be sold, without acceptance of donation or other claim under him, by one not related to him, the seller shall be punished as a thief.

AND this interpretation is approved by BIJA'GURI, the *Méd'bátit'bi* and the rest. MISRA also fully approves it; and according to this opinion the rule concerning sale without ownership, by one unallied to the owner, is single, and there is no distinction of embezzlement or no embezzlement by a kinsman: however, the term " claimant under him" becomes superfluous according to this interpretation; for, if a man sell property, obtained by acceptance of donation or the like it is not sale without ownership, since the effects had become his property by the acceptance of donation. Considering this objection, the author of the *Retnicara* has approved another interpretation. CULLU'CABHATTA expounds the word *apasura*, acceptance, purchase

purchaſe or the like: he, to whom no ſuch title has been given by the ſon or other near kinſman of the owner, is not a claimant under him *(anapaſara)*. Conſequently he has nearly followed the opinion of the *Retnácara*. When the ſon or near kinſman of the owner is giver or ſeller, there is a ground of claim: even on the opinion of the author of the *Calpateru* and the reſt, this interpretation may be adopted; for, in anſwer to the queſtion from whom accepted, the owner muſt not be aſſumed, but his ſon or near kinſman: elſe the term *(anapaſara)* would be unmeaning; and if a term can become pertinent, it ſhould not be conſidered as a ſuperfluous term expreſſive of what is naturally inferred. Conſequently the opinions of all authors coincide.

THE ſon, or other kinſman, who had given or ſold the thing to the perſon who ſells it again without ownerſhip, ſhall be amerced; for he cauſes the ſale without ownerſhip to be made. Or this is intimated by the author of the *Retnácara*, 'if the embezzlement be the act of another, &c;' for, if a thing, obtained by purchaſe from a kinſman who embezzled it, be ſold, the kinſman, who firſt ſold it to the *laſt* vender, ſhall be fined ſix hundred *panas*; and it appears from the particle "even" or "alſo," that the ſeller, who had purchaſed it from a kinſman, ſhall be amerced.

IT muſt be conſidered, that, if a ſon or other kinſman, ſecreting any property, ſell it through an intermediate perſon, the ſeller ſhall not be puniſhed as a thief, but ſhall be amerced in ſix hundred *panas*, or the like; and the intermediate perſon, being in fact a ſubſtitute only, ſhall not incur the puniſhment of a ſale without ownerſhip, but receive ſevere reproof or other reprehenſion ſuitable to ſuch improper conduct; but the man, who ſold the thing through an intermediate perſon, incurs the amercement mentioned.

XLI.

MENU:—BY this rule ſhall that man be puniſhed, who ignorantly makes a ſale without ownerſhip; but if he knowingly do ſo, he is liable to the puniſhment of larceny.

ATTRIBUTED

Attributed by Chande'swara to Menu, but inserted by Misra after the texts of Menu, premising the word "ſo." Is it not inconſiſtent with the following text, which, declaring innocent the ſale of another's property inadvertently made, ſhows, that there ſhall be no puniſhment?

XLII.

Matſya Purána:—That man, who ignorantly ſells the goods of another, is free from offence; but, if he knowingly do ſo, he is liable to the puniſhment of larceny.

Chande'swara explains *free from offence*, exempt from *capital* puniſhment, not exempt from amercement.

What is the meaning of the terms, "by this rule" (XL)? Misra replies: he, who ignorantly ſells the property of another, ſhall be puniſhed with an amercement of ſix hundred *panas;* but he, who knowingly ſells another's property, ſhall be puniſhed as a thief, by mutilation and the like.

Shall the man, who inadvertently ſells the property of another, be fined ſix hundred *panas*, whether he be a kinſman of the owner or not? Some hold, that a kinſman of the owner, who ignorantly ſells property not his own, ſhall be fined ſix hundred *panas*; but, knowingly ſelling it, he ſhall be puniſhed as a thief; and if, not being a kinſman, a man ignorantly ſell the property of another, he ſhall be puniſhed as a thief; but, if he wittingly ſell it, the law knowing no greater puniſhment, he ſhall, in that caſe alſo, be puniſhed as a thief: and the meaning of the text is, "by this rule," "by a "pecuniary fine of ſix hundred *panas*, and by the puniſhment of larceny, ſhall "the kinſman, and ſtranger, reſpectively, be puniſhed, if they ignorantly "ſell the goods of another; but whoever knowingly ſells the goods of another, "whether a kinſman or no kinſman, ſhall be puniſhed as a thief:" and the text of the *Matſya Purána* relates to kinſmen; for a ſtranger is, in all caſes, puniſhed as a thief.

Others ſay the pronoun "this," in the expreſſion "by this rule," referring to the ſubject of thought, intends a fine of ſix hundred *panas;* and the meaning

ing is, that a ſtranger, inadvertently ſelling the goods of another, ſhall be fined ſix hundred *panas*; and the expreſſion, "he commits an offence equal to larceny," ſuppoſes the wilful ſale of another's property: but a kinſman, whether ignorantly or knowingly ſelling the goods of another, ſhall be fined ſix hundred *panas*, for the law has not ſhown a leſs puniſhment. It cannot be objected, that there is no argument whereon to eſtabliſh ſuch a bad conſtruction; for, on any other conſtruction, the puniſhment would be diſproportionate. Thus the very puniſhment, which is due, when a man ſeizes a thing in the night and ſo forth, knowing it to be the property of another, would be incurred by one, who, keeping a depoſit to oblige the owner, (and the chattel being placed with his own goods and being ſimilar in quantity,) ſells that chattel which belongs to another. This would be highly inconſiſtent with common ſenſe; and the text of the *Matſya Purána* expreſſly declares, that there is no offence. If it be ſaid, that text ſhould be otherwiſe explained; they anſwer, can a capital puniſhment be proper in a caſe, in which it is declared, in general terms, that there is no offence?

OTHERS again ſay, the *Matſya Purána* declares innocent the holder of a depoſit, or the like, intruſted to him by the owner himſelf; but the puniſhment of a man, who, finding another's chattel dropped on the road, ſells it, thinking it his own, is mentioned by MENU: and this ſhould be expounded in conformity with the opinion of others, becauſe the ſeizure of a chattel dropped on the road is as it were a theft.

THE beſt of theſe opinions ſhould be ſelected by the wiſe; but one opinion only ſhould be adopted. In ſuch detail has puniſhment been mentioned for the caſe of a ſale without ownerſhip; and that puniſhment is only inflicted when the owner has proved his property.

XLIII.

CA'TYA'YANA:—THE owner of a thing, which he loſes, *and then finds*, ſhall recover it, if he prove by credible witneſſes that it was his own, and that he never gave, ſold, or otherwiſe aliened it.

"By credible witneſſes;" by competent evidence. The word "abandoned" denotes ſale, gift, or any other act annulling property.

The *Retnácara.*

CONSEQUENTLY "abandoned" (the term uſed in the text) does not merely intend "neglected," for in this place it may indicate any act annulling one's own property, and comprehend gift, ſale or the like; gift and ſale are repeated in like manner as one name of kine may denote cattle of that ſort, and a ſynonymous term in the ſame ſentence may intend cows only: therefore "abandoned" (or alienedd) denotes alſo gain, conqueſt and acceptance.

THE perſon, who had loſt the thing, ſhall recover it on ſhowing, that it is in fact his own, by proving, that he neither gave, ſold, nor otherwiſe alienedd it. Or he ſhall recover it on proving, that it was his own, and that he never gave, ſold, or otherwiſe alienedd it. Conſequently the order of procedure is this: firſt, on ſeeing his chattel in the poſſeſſion of any perſon, he has claimed it, and the buyer has produced the ſeller; next, in a conteſt with the ſeller, let the owner prove his property, by ſhowing, that the thing was his own, and that he never alienedd it. Let not the buyer conteſt the property, for VYA'SA directs, that "the law ſuit ſhall be continued between the owner of the thing loſt, and the ſeller" (XLIX). But, if the ſeller be not forthcoming, the ſuit muſt be defended by the purchaſer, as will be mentioned in another place.

XLIV.

CA'TYA'YANA:—BUT, if ſuch claimant prove not the thing to be his own by credible witneſſes, he ſhould be puniſhed as a thief, for the ſake of deterring *others* from making falſe claims.

"CREDIBLE witneſſes," mentioned approximately. Proof in general is meant. The *Retnácara* notices another reading, "if he prove it not by kinſmen," which is explained as mentioned incidentally, intending proof in general: ſome, it ſays, read 'if he prove it not by credible witneſſes,' and

the ſame meaning ſhould be inferred. That is, credible witneſſes indicate proof in general: the word (which literally ſignifies making known) does not merely intend witneſſes making known *the fact*; but, taken in a ſecondary ſenſe, with and without its primary ſenſe, intends poſſeſſion and other proof: for the purport is the ſame, as in the text, which will be quoted from YA'JNYAWALCYA (XLV).

"FOR the ſake of deterring &c;" to prevent repeated claims. Thus, being puniſhed to prevent a repetition of the offence, he may not repeatedly preſer falſe claims: and, the claim itſelf being criminal, as often as he makes a claim, the truth of which he cannot eſtabliſh, ſo often ſhall he be puniſhed: ſince puniſhment for each claim is proper, as it is for repeated theft. Thus ſome expound the text.

XLV.

YA'JNYAWALCYA:—THE right to a thing loſt *and then found* muſt be proved by the mode of acquiſition, or by *evidence of* poſſeſſion; otherwiſe, on failure of proof, a fine equal to a fifth part *of its value, ſhall be paid* to the king.

LET the owner of a thing, which has been loſt and is found, prove his property by the mode of acquiſition (by purchaſe or the like), or by *evidence of* actual enjoyment: otherwiſe, on failure of this and other proof, (that is, the property not being proved,) a fine equal to a fifth part muſt be paid to the king: this conſtruction agrees with the gloſs of the *Retnácara*. The written contract of ſale is evidence of a purchaſe; and ſo in other caſes: but actual enjoyment, even without proving a purchaſe or the like, is preſumptive evidence of property.

XLVI.

VRĬHASPATI:—THE covetous man, who, without any right, claims the property of another, on failing in his proof, ſhall be compelled to pay a fine *equal* to double *the value of the thing claimed.*

THIS

This payment of a fine equal to double the value supposes a claim covetously made, knowing the thing to be the property of another; but a fine equal to a fifth part of the value, as mentioned by Ya'jnyawalcya, supposes a claim made by mistake: there is no contradiction.

The *Retnácara.*

What is the import of the words of Ca'tya'yana, "he should be punished as a thief" (XLIV)? Some hold, that this repeats the punishment of theft. Thus, when a fine equal to double the value is mentioned, reference must be had to the text of Vya'sa.

Vya'sa:—The man, who steals hollow canes, flowers, roots or fruit, shall be compelled to pay a fine equal to double their value, or an amercement of five *crishnalas.*

"Hollow substances;" canes and the like. The word *crishnala* intends a quantity weighing a barleycorn. So the *Retnácara*, in the chapter on theft. The terms of the text of Ya'jnyawalcya intend five times the value; consequently, when a fine equal to five times the value is mentioned, reference must be had to the text of Na'reda.

Na'reda:—For *stealing vessels* made of wood, grass, or earth, bamboos and vessels made of bamboos, tendons, bones, or leather,

2. Potherbs, esculent roots, fruits or flowers, milk or the like, or the produce of the sugarcane, salt, or oil,

3. Victuals cooked, or *any thing* prepared for food, wine, boiled rice, or any cheap article, the fine is five times the value of the thing stolen.

And so, for other things, the amercement must be understood to be the same with the fine in cases of theft. But this is not satisfactory, for it disagrees with the *Retnácara.*

Others

OTHERS explain the text (XLV) differently. Let the owner of a thing loſt prove his property by the mode of acquiſition or by evidence of prior occupancy. Therefore, if it be proved in another mode (that is by witneſſes), or if it be not proved, a fine equal to a fifth part of the value ſhall be paid. Another caſe, *they ſay*, is mentioned by VYA'SA.

XLVII.

VYA'SA :—IF the plaintiff prove not his loſs by witneſſes, he ſhall *in that caſe* be compelled to pay double its value; and the purchaſer is entitled to the thing.

THEY expound this text "Let him not prove his loſs by witneſſes &c." Let him prove his property in the thing which has paſt from the right owner to another perſon; he ſhould not prove his right by witneſſes, but by other proof as mentioned by YA'JNYAWALCYA. If he cannot prove his right in the mode ordained by YA'JNYAWALCYA, what is the conſequence? The text declares, "he ſhall be compelled to pay" &c: and the purchaſer is entitled to the thing: that is, the claimant loſes the cauſe. But, if he cannot bring witneſſes, CA'TYA'YANA directs, that he ſhall be puniſhed as a thief (XLIV). It ſhould not be objected, that, if the right owner be unable to prove his property by the mode of acquiſition, why ſhould he bring witneſſes? Witneſſes ſhould be brought for the purpoſe of obtaining a mitigation of the fine: the king ſhould take evidence to decide according to the honeſt diſpoſition of the party. Thus the expoſition given in the *Retnácara*, to reconcile the texts, is appoſite: the text of YA'JNYAWALCYA (XLV) is applicable to the caſe of a claim made by miſtake; and the texts of VYA'SA and VRĬHASPATI, to a claim made from a motive of avarice.

THAT is totally wrong. If witneſſes be not adequate proof, how ſhould the fine be mitigated, under thoſe texts? If they be adequate proof, why ſhould not the party be exempted from a fine, under thoſe texts? And it contradicts the text of CA'TYA'YANA (XLIV), which ſhows, that the owner ſhall recover a thing loſt and then found, if he prove by credible witneſſes that it was his own, and that he never gave, ſold, or otherwiſe ali-

ened it. The true interpretation of the law is this; he, who cannot prove his right, incurs punishment, because his offence is similar to larceny (XL and XLIV). Consequently he shall be punished as a thief (even though he have not actually taken the goods of another) if he make the attempt: for punishment is mentioned generally by CA'TYA'YANA. A distinction is declared by YA'JNYAWALCYA and VRIHASPATI (XLV and XLVI), according to the different motives of the claim, mistake or avarice. The text of VYA'SA (XLVII) must be supplied with the words *if* and *in that case*: "if the plaintiff cannot prove his right by credible witnesses, he shall in that case be compelled to pay a fine equal to double the value of the thing claimed:" and this text, which relates to the case of a law-suit between the owner of a thing lost and the buyer, may, from parity of reasoning, be applied to a law-suit between the owner of the thing lost and the thief; therefore, in such a case, the supposed thief obtains the thing.

WHEN the buyer cannot produce the seller, nor prove a fair purchase, he shall pay an amercement, as directed by the following text.

XLVIII.

CA'TYA'YANA:—THE claimant should first prove his property by oral evidence; next, to clear himself, the buyer should prove a fair purchase by credible witnesses:

2. If he cannot produce the seller, let him even justify the purchase; and if the purchase be justified, he shall in no wise be blamed by the king.

3. LET him prove a publick purchase by honest and credible witnesses: there is no other mode propounded, divine or human.*

* THE order of proceeding should be nearly such. A man, finding a thing in the possession of some person, claims it as his own; and the possessor alleges, that he purchased it: in that case, if he can point out the seller, and

the seller acknowledge the sale, the suit must be maintained against the seller as abovementioned. But, if he cannot point out the seller, then the claimant must prove his property by sufficient oral evidence; and the buyer must afterwards justify the purchase by credible witnesses; that is, he must prove the actual purchase. The buyer has a right to prove a fair purchase, if he cannot point out the seller; but, if he point out the seller, he cannot afterwards offer proof of a fair purchase (XXXV 2). As this justification is of less force, the text proceeds, "if he cannot produce the seller, let him even justify the purchase" (XLVIII 2): the word "even" shows a distinct order of proceeding; if he cannot produce the seller, (if he cannot cause him to be apprehended), let him justify the purchase; or let him prove his purchase by credible witnesses. But if the seller, attending, do not acknowledge the sale, let the buyer compel an acknowledgment by the evidence of his own witnesses, who knew of his purchase: and this only is a true production of the seller; it is not sufficient, that he merely point out the person of the seller.

Is not this inconsistent with the text of Vya'sa?

XLIX.

Vya'sa:—But if the seller be produced, the purchaser shall by no means be condemned; for then the law-suit must be continued between the owner of the thing lost and the seller.

It is not inconsistent; for this is proper, since the word law-suit here denotes the suit promoted by the original owner of the thing to obtain his property. When a man claims a thing, which has been purchased by any person, why should the buyer unnecessarily take the trouble of producing the seller? But when the owner proves his property by witnesses or otherwise, that trouble must be taken.

L.

Menu:—But, if the vender be not producible, and the vendee prove the publick sale, the latter must be dismissed by the

the king without puniſhment; and the former owner, who loſt the chattel, may take it back *on paying the vendee half its value.*

If the vender being dead, or having gone to another country, cannot be apprehended, and the vendee prove the publick ſale, he is not liable to puniſhment; he muſt be diſmiſſed by the king; and the owner of the thing ſold without ownerſhip ſhall receive the chattel from the buyer.

CULLU'CABHATTA.

A DISTINCTION will be mentioned in reſpect of what ſhall be recovered.

DECLARING the mode of juſtification, CA'TYA'YANA ſays; "let him prove a publick purchaſe" &c: thus clearly excluding juſtification by any other mode; "There is no other mode" &c. Ordeal is not ſufficient proof; but the ſale muſt be proved by human teſtimony. Or the ſenſe may be, "no other proof, divine or human, ſhall be admitted, except the evidence of witneſſes." In the abſence of the vender, a paper in the vender's own handwriting is no evidence without witneſſes. Is adverſe poſſeſſion for the ſpace of twenty years, or the like, inadmiſſible proof? ſay not, "be it ſo;" for that would be inconſiſtent with common ſenſe. To this ſome reply, that the evidence of witneſſes, as the mode of proof required from the owner of a thing loſt, is only mentioned illuſtratively by YA'JNYAWALCYA; as proof by kinſmen, in the text of CA'TYA'YANA, alſo denotes generally proof of a title or of previous poſſeſſion. It cannot be objected, that a written document would be proof of right; for that is not admiſſible evidence in ſuch a caſe. Neither can it be objected, that there is a diſtinction in the expoſition given in the *Retnácara, on the text of* CA'TYA'YANA (XLIV); for that is otherwiſe explained by the ſame author.

BUT the author of the *Retnácara*, expounding kinſmen as intending proof in general, ſays, 'if kinſmen, that is, witneſſes, cannot be produced, other evidence may be brought.' It muſt be conſidered, that, if ordeal be admiſſible proof, the mention of it is ſuperfluous, ſince it would be comprehended in the general ſenſe of the expreſſion uſed in the text of CA'TYA'YANA.

It cannot be objected, that it is only mentioned for the ſake of the order *in which different proofs are admiſſible*; for ordeal is directed on failure of other proof.

PROOF is declared to be by writing, by poſſeſſion, or by witneſſes: on failure of theſe ſeveral proofs, one of the ſeveral ordeals is ordained.

HUMAN teſtimony cannot be poſtponed to ordeal; it would be contrary to common ſenſe. Thus, ſome perſon having received the ſtolen property of another, and, afterwards, the true owner ſeeing it, the poſſeſſor pleads the purchaſe, and to prove it offers a document in the ſeller's own handwriting; in that caſe, it would become ſufficient proof. In cauſes concerning loans and the like, the document muſt be verified by compariſon with another document in the ſame handwriting; but here, without reference to the vender, a written document cannot be given in evidence; yet the writing of a perſon reſiding at a diſtance would, when collated with another document in his handwriting, become evidence, after the death of the writer. Nor can it be ſaid, that there is no difficulty in admitting a written document to be ſufficient proof of property, on the part of the owner of a thing loſt, ſince the ſale regards him; and the evidence on both ſides being equal, the proof fails. A document in the handwriting of a vender, who reſided in a diſtant country, is no evidence; but if his reſidence be near, even his ſons, acknowledging the ſale made by their father, become witneſſes. The word "there" ſhows, that ſecondary evidence, in neglect of the beſt evidence, is not admiſſible. It would contradict the legiſlator's own words; thus, if the word kinſman be uſed for proof in general, "there" alſo refers to proof. The meaning is, that, if there be poſſible evidence, another mode of proof (that is, proof by ordeal) ſhall not be admitted. What follows from the rule, that proof by ordeal is not admiſſible, if there be evidence, muſt be well examined. Thus ſome interpret the law.

VRIHASPATI:—POISON is the ordeal ordained, where a thouſand *pieces* have been ſtolen; fire, where *the theft is* a fourth leſs, *or ſeven hundred and fifty pieces:* water, where *it*

 is

is three-fourths leſs, *or two hundred and fifty pieces;* and the balance, where half, *or five hundred pieces, have been ſtolen.*

Ordeal being thus directed in caſe of an accuſation of theft, and this being, in its effect, ſimilar to a charge of theft; therefore the opinion of Chanoe'swara is right. "There" &c. (XLVII 2) refers to witneſs, explained in the *Retnácara* evidence in general. As for what has been ſaid, that if a man, alleging a written document in the ſeller's own handwriting, exhibit a document ſubſcribed by a perſon, whoſe reſidence is in a diſtant country, then, a writing being no evidence, proof muſt be required; all that is futile, for it becomes evidence when the handwriting of the ſeller is proved; and here, if the handwriting be doubted, proof may be required: and if it be wiſhed to prove the handwriting by compariſon with another document; even in that caſe the writing may be ſo proved. This again is nothing to the purpoſe.

When neither party can adduce evidence, what ſhall be the deciſion? and when the buyer cannot juſtify the purchaſe by evidence, but the plaintiff proves his property, what ſhall be done? The law declares it; "the defendant not clearly proving &c." (XXXIX). If the plaintiff ſay, "this metallick veſſel contained a thouſand pieces of ſilver belonging to me, reſtore me the veſſel with the money," the veſſel and the money muſt be reſtored, if the defendant cannot perform ordeal; but, if he can diſprove the money by ordeal or otherwiſe, the veſſel only ſhall be reſtored. Thus ſome expound the law. But this is futile; for it is inconſiſtent with the practice of great perſons. An expoſition, eſtabliſhed in one caſe, is applicable to another, unleſs there be a *ſufficient* objection: under this maxim, the very rule, delivered under the title of loans and payment (Book I, v. CXCIX), is proper in this caſe.

From this text, delivered under the title of loan and payment, it appears, that, much being claimed by the creditor from the debtor, ſo much only, as is proved, ſhall be recovered: and the ſame is proper even in this caſe. The expreſſion being general, if it be received as applicable to the whole

whole claim, then an unproved claim is surely null. It should not be objected, that the text is limited to the title of loan and payment by the use of the term *dhaní* (which commonly signifies creditor); for its literal meaning of owner is pertinent.

LI.

NA'REDA:—LET not the purchaser conceal the man from whom he purchased; on that man depends his own justification: if he act otherwise, his crime is held equal, and he shall suffer the same punishment.

IF he act otherwise, if he conceal the vender, his crime is equal to the crime of the vender, and he shall suffer the same punishment: *that is, the punishment of larceny to which the vender would have been liable.*

The *Retnácara.*

IF the buyer be a near kinsman of the owner, shall the penalty be an amercement of six hundred *panas*, as directed for sale without ownership by a kinsman (XL); or shall he be punished as a thief? It is said, suspicion of theft being removed, if the vender be proved, although his person be concealed, there is no difficulty in saying, that the penalty for concealing his person shall be six hundred *panas*; but, if the vender be not proved, the buyer appears to be the real thief, and shall be punished as such, even though he be a near kinsman. That, however, is not indicated by this text; but, a fine or *punishment* being directed by the text of CA'TYA'YANA (XXXVIII), it appears, that he shall be punished as a thief, because his crime is equal to larceny.

WHAT is the concealment of the vender? If it consist in not particularly mentioning, that the thing was purchased through that person; why should the buyer do so? When he dishonestly buys the property of his own kinsman, from a stranger, at a low price, having been requested by the seller not to make known, that it was sold by him; the buyer might in that case conceal the man from whom he purchased, through fear of forfeiting his friendship, or from some other motive. Or the word may be explained "the written contract;"

and

and the ſenſe may be, " let not the purchaſer conceal the contract &c." and the motive for concealing it may be the apprehenſion of making known the very low price at which the thing was bought.

How is it known, that the contract is concealed? It is not aſcertained by the mere omiſſion of producing it, whereby a failure in juſtifying the purchaſe would imply wilful concealment; nor does it appear from the text of NA'REDA (LI), that the puniſhment *of larceny* is ordained for a ſimple failure in juſtifying the purchaſe; were it ſo, the offence would be equal whenever the purchaſe was not juſtified; but, this not being declared, the expreſſion, " let not the purchaſer conceal &c." cannot be ſo applied. To this it is anſwered, if the buyer in the firſt inſtance produce the contract, and afterwards, defending the ſuit before other arbitrators, conceal it, in this and other caſes concealment is aſcertained. In this caſe, if the purchaſe be proved, the purchaſer, being a near kinſman, ſhall not be puniſhed as a thief, but be fined ſix hundred *panas*, for his offence in concealing the contract.

BUT, if the owner have no proof of his property; nor the buyer, of his purchaſe; the claimant loſes the cauſe: for the purchaſe is *not* to be juſtified, *until* after the claimant has proved his property.

LII.

VRĬHASPATI: — IN a ſuit, where proof is deficient, the king muſt himſelf decide according to the equal, greater, or leſs credibility of the parties.

EMPLOYING ſpies in the manner mentioned under the title of bailments, and thus aſcertaining the equal, greater, or leſs honeſty, or diſhoneſty of the parties, the king muſt himſelf decide the ſuit.

The *Retnâcara.*

THE meaning is this; when a buyer, ſued by the owner, has produced the ſeller; and, the ſuit being continued againſt the ſeller, both parties aſſert their own property in the thing, but neither have ſufficient proof; in ſuch

a cafe this text is to be followed. The decifion, where both parties are equally credible, will be mentioned: if one party be lefs credible, he lofes the cauſe; and the perſon, whoſe credibility is greater, gains it.

It is the buſineſs of a ſpy, aſſuming the appearance of a thief, or ſome *other* diſguiſe *ſuch as that* of one employed in the ſervice of a petty prince, to inſinuate himſelf into the friendſhip of the man, and detect his converſation and conduct with his relatives. Sometimes the ſpy ſays, "to day let us carry to a diſtant place, and ſell, this chattel which has been privately obtained:" and according to his anſwer his conduct is to be preſumed. Wiſe kings, or their officers, may themſelves adopt other modes.

According to this opinion, if neither party can adduce proof, their general conduct ſhould be examined; and thus may the ſuit be decided: in other cafes the general conduct even of witneſſes ſhould be examined: otherwiſe, the king would be unjuſt; and the lofs would be equally borne by both parties, whenever proof is deficient. This ſhould be examined by the wiſe.

But Misra holds, that, if the purchaſe was publickly made, and the buyer cannot produce the vender, his place of abode being unknown, the buyer ſhall not be fined; for he is not criminal. Who then ſhall have the thing? Shall the owner have it, becauſe his property is not annulled? Or ſhall it remain in the buyer's poſſeſſion, until he receive the price? Vrĭhaspati ſays; in a ſuit, where proof is deficient, if it be pleaded, that there are not means of aſcertaining the vender's place of abode; (if the buyer ſay, "I know not where the ſeller is;") the king muſt decide according to the equal, greater, or lefs credibility of the parties: the lofs muſt neceſſarily be borne by both parties, according to their reſpective characters.

What deciſion ſhall be given? The ſame legiſlator propounds:

LIII.

Vrĭhaspati:—If a purchaſe be made before [illegible] ſembly *of traders*, with the knowledge [illegible]

ficers, but from a ſeller whoſe dwelling-place is unknown; (or if a claim be made after the death of the ſeller *though known*),

2. The owner of the thing may recover his own property, on paying half the price given: half the value is loſt to each of them; ſuch muſt be the deciſion.

"Before a publick aſſembly of traders;" meaning generally a market or the like. "With the knowledge of the king's officers;" officers appointed by the king for that purpoſe: this alſo is a general expreſſion. "From a ſeller, whoſe abode is unknown;" from one, whoſe dwelling is not well known. So the *Ratnácara*.

In the caſe of a private purchaſe, the buyer muſt reſtore the thing to the owner, without receiving back the price, as already mentioned.

How can the buyer be entitled to half the price according to the opinion of Su'lapa'ni; ſince the owner's property in effects ſtolen is not annulled, and the owner has not received the price? But, according to the opinion of Va'chespatibhatta'cha'rya, the buyer receives no part of the price, ſince the ſale is null, as a ſale without ownerſhip, although the thief's property in the thing have been transferred; or he is entitled to the whole price becauſe he has property in the thing.

LIV.

Vri'haspati:—A purchase from an unknown ſeller is one fault; negligence in keeping the thing is another; and theſe two faults are to be conſidered as juſt cauſes of loſs to each.

By mentioning, that both are in fault, it is meant, that equal loſs is the puniſhment of both faults. Thus, according to Su'lapa'ni, although the owner's property in the thing was not annulled, he pays half the price, on account of his fault in neglecting the cuſtody of the thing; and the buyer loſes

loſes half the price, on account of the ſlight offence of buying from an unknown vender.

According to this opinion, is not the half price, received back by the buyer, an exceſſive advantage? He does not receive half what remains above the loſs; for the thief, not the owner, received the price from him: conſequently the loſs of the chattel received from the thief is the actual loſs; and what the buyer receives from the owner, becomes his gain, ſince the owner had no concern in the ſale: what is given by the owner, ought therefore to be taken by the king, as a fine. To this it is anſwered, ſince it is not fit that the king ſhould receive the fine for the fault of neglecting the cuſtody of the thing; and ſince the payment of it is neceſſary under this text; and ſince it is alſo neceſſary that the buyer ſhould receive it from ſome perſon; the king ſhall cauſe it to be paid to him. "The king ſhould himſelf decide &c." (LII). Therefore, although it might not accord with general reaſoning, the buyer ſhall receive half the price with the approbation of a king, who governs according to law.

According to the opinion of Va'chespati bhatta'cha'rya, there is no difficulty: the full property is revived, where the ſeller is known, by the mere production of the ſeller: but, in this caſe, full property is revived after paying half the price; and the buyer is not entitled to receive the whole price, becauſe there has been a fault on his part.

LV.

Mari'chi:—If a purchaſe be made by day before a publick aſſembly of traders, with the knowledge of the king's officers, the purchaſer is juſtified, and acquires the abſolute property.

2. But if he cannot produce the ſeller, his dwelling-place being unknown, the loſs ſhall be borne equally by the buyer, and by the *former* owner who had loſt the thing.

"His dwelling-place being unknown," or it being uncertain whether he be alive

alive or dead: The expreſſion is general. If the property be not proved, what ſhall be the deciſion in the ſuit between the owner and the thief? The ſame; for both are equally in fault: and the *Retnácara* ſo expounds the text.

LVI.

VISHNU:—THERE is no crime in him, who ignorantly buys *from a ſtranger* the goods of another: but the owner ſhall recover his property.

On paying half its price muſt be ſupplied in this rule: thus it does not relate to private purchaſes; if it did, it would be improper to ſay, that a buyer ſhould be acquitted, without proof of a fair ſale, though ſuſpected of theft: but referring the rule to an open purchaſe, it coincides with the text of VRĬHASPATI (LIII); and fitly ſhows that the property ſhall be recovered on paying half the price. It cannot be ſaid, that no fine is incurred, if a ſale privately made be any how proved; but the owner ſhall recover his property, without paying any part of the price: and in the caſe of a fair ſale, the proper deciſion is that, which is mentioned by VRĬHASPATI (LIII). A ſale proved partakes of the nature of a fair ſale.

MISRA ſays, ſome purchaſes, though made from the owner himſelf, are queſtionable: and the rule of deciſion is the ſame as in ſale without ownerſhip.

LVII.

VRĬHASPATI:—THERE is no fault in the man, who purchaſes a thing, at a fair price, delivered by the owner in *the* preſence *of credible perſons;* but a fraudulent purchaſer is a thief:

2. A fraudulent purchaſe is declared to be that, which is made at a very low price, in a private apartment, in a place out of the town, by night, in a ſituation where the bargain cannot be overheard, or from a man not known to be honeſt.

DELIVERED by the owner in the preſence of credible perſons: the text muſt

must be so supplied By the subsequent phrase, "a fraudulent purchaser is a thief," which is expounded, purchasing in the recesses of a house, it must be understood, that a fair purchase is made in a place fit for such transactions. a very low price being mentioned in the subsequent verse, "price' in the first verse signifies a fair price Accordingly, if a man buy a thing at a very low price, even from the owner himself, whom he has brought to his own house in the night, and whom he has deceived, he is criminal, and shall be punished as a thief But there is no offence in a sale voluntarily made, at a low price, by an indigent man, with the approbation of great persons and such is the practice

What is the rule concerning traders, who give a little grain or the like to indigent persons distressed for subsistence and applying for a loan, and who take a writing for the debt at a high valuation, or who receive a very high price for a scarce and necessary article? Is the contract legal or not? The question is answered, as in the title of loan and payment under the text of Ca'tya'yana (Book I, v XXXVII 1), interest voluntarily promised must be paid, but, if the promise have been extorted by force, such interest shall not be paid, so, in this case, a price or the like, voluntarily agreed on, stands good, but if consent have been extorted, it does not stand good For example, a man, distressed to provide for his father's obsequies, wishes to sell his own furniture, but not *readily* finding a purchaser, applies to some person, saying, "assist my occasions," the other, hearing all the circumstances, replies, "this is your purpose, but I desire gain,' and the vender rejoins, "I know, that my purpose must be accomplished by you at the expense of your own wealth, I am fully satisfied to sell at a low price.' in such a case there is no offence in buying at a low price But, should he, being of a harsh disposition and desirous of purchasing the thing at his own price, offer to a man, who cannot go elsewhere, half the price, at which such things are sold on all sides, and bid him go where he pleases *if he will not take that price*, in that case a purchase at such a price is not valid and the same must be understood of fixing an excessive price, according to the circumstances of each case. But there is no offence in traders, who keep a store of commodities for a long time, if they receive a high price, voluntarily paid for a scarce article. there is offence in obtaining a high price

by deceit, harſhneſs, or the like. All this is ſtated as reſulting from the reaſon *of* the law, on the expoſition of the text as delivered by MISRA: it ſhould be examined by the wiſe.

CHANDE'SWARA, inſerting this text among thoſe which ſhow ſale without ownerſhip, ſays nothing expreſsly regarding it. After the text of VISHNU (LVI) he inſerts the following text.

LVIII.

NA'REDA:—AN open purchaſer is clear of imputation; but a purchaſe in ſecret is a theft.

AFTER this text, inſerting the text of VRI'HASPATI (LVII), he ſubjoins the text of NA'REDA (XXXVIII) as expounding the ſenſe of the preceding text. If the text of VRI'HASPATI (LVII) relate to ſale without ownerſhip, the ſenſe is this; "delivered by a perſon pretending to be the owner." The term (*adhyacſha*) ſignifies one capable of ſuch tranſactions as ſale and the like. Civil contract is among the ſenſes of *acſha* in the dictionary of AMERA. According to this interpretation, "from a man not known to be honeſt" (*aſatah*), ſo expounded by CHANDE'SWARA, is pertinent in the literal ſenſe of the terms. It is mentioned to intimate, that there is no offence, if the man, though in fact a thief, have the appearance of being no thief. But, according to the opinion of MISRA, it means, from a perſon not praiſed *or revered, that is*, from an infant or the like. AMERA mentions praiſed among the ſenſes of *ſat*. Or fraudulent purchaſe is here deſcribed generally.

LIX.

YA'JNYAWALCYA:—HE, who ſhall receive, from the hand of a ſtranger, what had been taken from him, or what he had loſt, without giving notice to the king, ſhall be fined ninety-ſix *panas* of copper.

HE, who receives it, without giving notice to the king, that his property had been taken away by that perſon, ſhall be fined ninety-ſix *panas*; for he is guilty of concealing a thief. The *Retnacara*.

HE

He ſhall be fined, becauſe he deprives the king of his due.

MISRA.

A FINE is due from the thief to the king. Thus both gloſſes agree. A fine has been declared in the caſe of a ſale of loſt property by a ſtranger; conſequently there is nothing incongruous.

Is there no offence in ſelling a waif? There is, if it be ſold within the ſpace of three years; but not, if it be ſold after that term: for it is proper, that another ſhould obſerve the ſame rule which is preſcribed to the king.

LX.

MENU:—THREE years let the king detain the property, of which no owner appears, *after a diſtinct proclamation*: the owner, appearing within the three years, may take it; but, after that term, the king may confiſcate it.

2. HE, who ſays, "this is mine," muſt be duly examined; and if, *before he inſpect it*, he declare its form, number, and other circumſtances, the owner muſt have his property;

3. But, if he ſhow not at what place and time it was loſt, and ſpecify not its colour, ſhape, and dimenſions, he ought to be amerced.

IT muſt be noticed, that, if the owner, ſhowing the time and place and ſo forth, claim the thing even after three years, he may recover it, provided he had not neglected it. However, by the text of MENU, there is no offence in ſelling it after that term, if it be not claimed. Accordingly, ſince a waif is to be taken by the king, a man ſhall be puniſhed, if he appropriate it without acquainting the king.

LXI.

MENU:—ONE commodity, mixed with another, ſhall never be ſold *as unmixed*; nor a bad commodity, as good; nor

leſs

leſs *than agreed on*; nor any thing kept at a diſtance or concealed.

Goods dyed with ſaffron and the like, mixed with goods dyed with ſaffloweꝛ and ſimilar drugs, ſhall not be ſold *as unmixed*; nor a bad commodity as good; nor leſs than the weight agreed on; nor a thing which is at a diſtance; nor goods which have loſt their colour: this being ſimilar to a ſale without ownerſhip, the puniſhment ſhall be the ſame.

CULLU'CABHATTA.

WHAT quantity ſhall be taken to determine the proportion of puniſhment ſimilar to that of larceny? It is ſaid, ſo much as is the proportion of the inferiour commodity mixed with another; or computing the price of good and bad commodities, ſo much as is the gain by ſelling a bad commodity at the price of a good one; and ſimilarly in other caſes: for there is no theft in regard to the other portion of the ſale.

THE law of ſale without ownerſhip being extended to this caſe, the fine for a kinſman is ſix hundred *panas*. It muſt be conſidered, in the caſe of ſale without ownerſhip, that, if a trifle be ſold by a kinſman, the fine ſhould not be ſix hundred *panas*: for this would be diſproportionate. When the fine for theft would be ſix hundred *panas*, he ſhould pay the ſame; and it is the limit of his amercement: but where the fine for theft would be leſs, he ſhould pay the ſame fine as a thief: and let it not be objected, that there is no argument, whence to deduce whether ſix hundred *panas* be intended as a leſs or greater amercement than the fine for theft; it is proper, that the fine be leſs, ſince a kinſman is entitled to the uſe of the property.

CHAPTER

CHAPTER III.

ON CONCERNS AMONG PARTNERS.

SECTION I.

ON PARTNERSHIP IN TRADE AND ADVENTURE.

I.

NA'REDA:—When traders, or others, jointly carry on buſineſs, it is called a concern among partners, a title of judicial procedure.

"Jointly," on a joint ſtock.

The *Retnácara.*

The word ſignifies mixed or united; for the verb *bhú* compounded with the prefix *ſam* ſignifies mix. That union is formed by means of a joint ſtock, or by means of united perſonal efforts. Thus five traders, uniting their capital, carry on trade by purchaſe and ſale of commodities; or five men, receiving wages, undertake jointly to aſſiſt the buſineſs of ſome rich perſon. The expoſition of the *Retnácara* muſt be underſtood as illuſtrative of a general ſenſe. The meaning of the text is ſubjoined: the expreſſion, "and others," comprehends officiating prieſts receiving a ſtipend and the like. The union of capital or exertion, for work, for commerce, for effecting ſome buſineſs, for a ſacrifice or the like, or the ſame work performed by ſeveral perſons on a joint ſtock, or with united labour, is a concern among partners, or is a common exertion by partners; the inflection of one caſe being ſubſtituted for another. Conſequently the performance of the ſame work by two or more perſons, uniting by means of joint capital and ſo forth, is a con-

cern or common exertion of partners *(ſambhúya ſamutt'hána)*; *ſi'há*, preceded by *ſamut*, ſignifies performance of work. Or the relative is employed in the ſeventh caſe with the ſenſe of refuge or prop, as in the example, "reſides with his preceptor:" conſequently that agreement or rule, on which buſineſs is jointly conducted, is a title of law called concerns among partners. The pronoun is uſed in the maſculine gender as in the text of VYA'SA (Chapter II, v. IV).

WITH what perſons ſhould partnerſhip be contracted; and with what perſons ſhould it not be contracted? This queſtion is anſwered in the ſubjoined text.

II.

VRĬHASPATI:—PRUDENT men ſhould not carry on trade, or the like, jointly with perſons deficient in capacity or induſtry, afflicted by diſeaſe, ill fated, or deſtitute of friend *and home;*

2. Let a man carry on buſineſs jointly with perſons of high birth, able, diligent and ſenſible, ſkilled in coins, in purchaſe and in ſale, honeſt and perſevering.

IN all affairs, an incapable man ſhould be excluded. An indolent man, who neglects buſineſs, though able to perform it, ſhould in general be excluded: in ſome inſtances however, as in the duties of an officiating prieſt, the excluſion is not eſſential. The exception of a perſon afflicted by a diſtemper, which diſqualifies him for buſineſs, is proper, for he is incapable: it is repeated, becauſe the excluſion of a perſon, in whom diſeaſe has made its firſt appearance, is neceſſary on ſome occaſions; and a perſon afflicted by a diſeaſe indicating a taint of ſin muſt be excluded from the performance of ſacrifice, though otherwiſe capable, for even pure perſons, jointly performing a religious rite with him, would be diſhonoured, ſince no benefit would ariſe from it. Outcaſts and the like ſhould alſo be excluded from the performance of a ſacrifice or other ceremony; for the term is illuſtrative of a general meaning. "Ill fated;" not deſtined to acquire wealth, gain, honour, and the like: it may be known from his

his horoſcope, or from the viſible reſult of his actions: he muſt be ſhunned in the concerns of traders and the reſt. "Deſtitute of friend" or protector; ſuch a man is excepted in concerns of trade and the like; for, ſhould a diſpoſition to knavery or wickedneſs ariſe, it would not be repreſſed: or "deſtitute of home;" excepted in the apprehenſion, that ſuch a perſon might abſcond with the property.

"PERSONS of high birth;" a perſon ſprung from an honourable family will not be diſpoſed to break his engagements, even though his life be endangered. "Able;" ſkilled in buſineſs. "Diligent;" attentive to buſineſs without conſidering his own eaſe: ſuch a perſon is ſuperiour to men in general. "Senſible;" capable of contriving expedients, when diſtreſs occurs: even in the performance of religious rites, the ceremony miſcarrying, a perſon acquainted with the modes of expiation or the like may be required; other caſes are obvious. "Skilled in coins"; explained in the *Mitácſharé* ſtamped money, gold *niſhcas* and the like; converſant with theſe, and with ſilver coins and the reſt, and ſkilled in diſtinguiſhing coins which contain copper or the like: in commerce his excellence is obvious; in other affairs he is alſo uſeful. "Skilled in purchaſe and in ſale;" in commerce, he, who is converſant with purchaſe and ſale, knows the profit to be made: in other inſtances it muſt be explained according to circumſtances. "*Honeſt*, or pure," is referred to conſtant, occaſional, or voluntary rites, or to concerns in general.

Is not the direct precept ſuperfluous, ſince partnerſhip is of courſe permitted with perſons different from thoſe excepted; or the exceptive text ſuperfluous, ſince perſons, different from thoſe with whom partnerſhip is directed, are of courſe excepted: and thus, is not the repetition ſuperfluous? No; the exceptive text is neceſſary to exclude the perſons *therein* deſcribed; and the direct precept is neceſſary to denote, that the perſons deſcribed *in it* ſhould be ſought for. All perſons, different from thoſe deſcribed in the ſecond verſe, are not to be excluded: perſons not of high birth, nor yet deficient in capacity and ſo forth, may be admitted: but if a perſon of high birth and ſo forth be found, he ſhould be preferred. This ſenſe is inferible. The text is a precept of ethicks, ſhowing preſent good and evil: therefore, ſhould the precept be not obſerved, preſent evil, as loſs, ſtriſe, or the like, enſues; but it is no breach of duty: on

the

the contrary, any how to maintain a perſon afflicted by diſeaſe is a duty; and there is no offence in ſometimes admitting an indolent perſon *into partnerſhip*, on an agreement for conducting commerce upon the ſtock of one, by the labour of another. It muſt be conſidered, that, if all exclude incapable perſons and the reſt, it follows that all *partners* muſt be capable: conſequently a partnerſhip of capable with incapable perſons is forbidden. In ſome inſtances a partnerſhip may exiſt of perſons all deficient in capacity; for none of them are incapable, compared to each other: but if, among perſons of ſimilar rank, one be ſuperiour, reſpect ſhould be ſhown to him.

III.

NA'REDA:—THE junction of ſtock is the cauſe of men carrying on buſineſs in partnerſhip with a view to gain; therefore each ſhould contribute his ſhare to the common exertion.

"JUNCTION of ſtock;" union of capital. "Is the cauſe;" is the efficient means. "Therefore," that is, for this reaſon, they ſhould make exertions in proportion to their ſhares. The text is ſo expounded by CHANDE'SWARA. Without a capital, or ſtock, trade cannot be carried on; therefore let all contribute wealth, and ſupply what is required for trade, as the hire of boats, oxen and other carriage. "In proportion to their ſhares;" that is, let not one furniſh the whole; as appears from a text which will be cited.

IV.

NA'REDA:—As the ſhare of a partner, *in the common ſtock, or in work*, is equal, or more, or leſs, in the ſame proportion, ſhall his charges, loſs, and profit be *equal, increaſed, or diminiſhed.*

As the ſhare of each partner in the whole capital is leſs, more, or equal, ſo ſhall be his "loſs" on the capital, by the ſinking of a boat or the like: the loſs ſhall be ſettled in proportion to the ſhare *of ſtock.*

"CHARGES;" neceſſary charges; the king's taxes, and the hire of boats and

and the like. "Profit;" gain. If trade be again carried on upon the profit added to the original ſtock, the loſs and profit is ſhared as abovementioned. Both texts may be applied to agriculture and the like, unleſs more be expended by one of the partners, of his own authority. In directing, that the charges, loſs and ſo forth be increaſed or diminiſhed, in proportion to the ſhare of a partner in the common ſtock, the ſame is underſtood of labour: as is clearly expreſſed in the following text.

V.

VRĬHASPATI: — As his ſhare of the outlay is equal, greater, or leſs, in the ſame proportion, *unleſs there be a ſpecial agreement*, ſhall each partner pay charges, perform labour, and receive profit.

"CHARGES;" loſs by the ſinking of a boat or the like; and diſburſement for the payment of the king's taxes and ſo forth. All this ſuppoſes, that there is no ſpecial agreement.

VI.

YA'JNYAWALCYA: — IN a partnerſhip among traders, who carry on buſineſs with a view to gain, let the profit and loſs be diſtributed to each according to his ſhare in the ſtock, or according to ſpecial agreement.

IF there be no ſpecial agreement, the diſtribution muſt be regulated by the ſhares in the ſtock; if there be a ſpecial agreement concerning profit and loſs, let the profit and loſs be diſtributed accordingly. The *Chintámeni*.

PROFIT and loſs are mentioned as inſtances merely; for the reaſon of the law is equally applicable to labour. The *Retnácara* concurs in the ſame expoſition, but reads, in the fourth meaſure of the verſe, *yat'há vá ſamvidá crítau*, inſtead of *yat'há vá ſamudábrĭtam*: it is expounded 'or as ſettled by a *ſpecial* agreement.' Accordiog to this opinion more is allowed, under a ſpecial agreement, to one of the partners, from a motive of reſpect or affection: but, extorted by force, ſuch an agreement is null (Chap. II, v. X).

If there be a ſpecial agreement in reſpect of labour, it is expreſsly declared, that the contribution ſhall be unequal.

VII.

NA'RADA: — LET the partners, unleſs bound by *a previous* agreement, duly contribute to the ſtock, to the charges of living and of trade, to the deductions, and weights, and the care of valuable articles.

"STOCK;" ſtore for purchaſe and ſale. "Charges of living;" way charges. "Charges of trade;" hire. "Deductions" made, for particular purpoſes, from the joint property. "Load;" weights. "Valuable articles;" ſanders wood and the like. "Duly," as is proper. "Unleſs bound by agreement;" not being bound, no ſpecial agreement having been previouſly made.

The *Retnácara.*

"WAY charges:" if one of four partners go to a foreign country, to buy or ſell, let all the partners defray his way charges; and ſimilarly defray the charges of his maintenance while living abroad; for the reaſon of the law is equally applicable; and it is equally intended by the text, ſince the word hire ſignifies food in general. "Charges of trade, or *hire;*" the term is illuſtrative of a general meaning, comprehending the king's taxes and the like. "Deductions" may occur where an exceſs has been given by miſtake, and in other caſes: there is no objection to the explanation of this term as intending debt: if it happen that a purchaſe, or the king's taxes, cannot be ſupplied from the ſtock already accumulated, it being then neceſſary to contract a debt, the debt contracted by the partner ſent abroad, who, though not expreſsly authorized, has not been reſtricted from contracting debts, muſt be paid by all the partners. But this is not mentioned in the *Retnácara.* "Load," explained weight, intends the weights *uſed in commerce* and ſo forth. Let them provide and defray thoſe ſeveral articles. By the expreſſion 'and ſo forth,' gift and the like is comprehended *in the gloſs.* "As is proper;" in proportion to their ſhares. "No ſpecial agreement having been previouſly made;" an agreement for exemption from labour

labour not having been made, at the time when all united *in partnership* not being bound by such an agreement.

Others explain the text, "Let all apportion the vessels, the accumulation, the charges, the expense of transport and of custody, and the durable shares." If any misfortune happen, it shall not fall on one of the partners. But, if there be an agreement for proportioning the labour, all shall not perform all the work, but they shall furnish labour respectively, according to agreement as is intimated by the concluding part of the text. Or, if there be an agreement, that one of the partners shall contribute no labour, it must be so settled.

Both opinions should be admitted, for they are proper and what is consistent with common sense, though not mentioned in either exposition, must necessarily be understood as comprehended in the sense of the text.

VIII.

Vyasa.—Never *deceiving each other, present or absent,* let them make sales and purchases, according to *the value of* the various articles.

Here the privative *a* must be interposed, "not deceiving" that is, let them transact business, never deceiving each other

The *Vivada Chintamani.*

Deceit in the presence of the partners consists in appropriating things under false pretences, or in not making due exertions. Thus, one of the partners takes a thing and says, in the presence of the rest, "I take my private property which was placed here," or he mistates the price paid for a commodity. Deceit in respect to labour may be thus: when sent for any business, he says, "this business is not to be performed by me," or says, "I have performed much labour, let this business be done by you." Deceit in the absence of the partners is obvious. Let them proceed according to the profit between the purchase and sale of the various articles, as cloves, nutmegs, pease, wheat, cotton, grass and the like

IX

IX.

VRĬHASPATI: — THEY are declared to be competent arbitrators and witneſſes for each other, in doubtful caſes of deceit, provided they bear no enmity to either party.

" THEY;" the partners.

The *Retnácara.*

IF one of eight partners, being accuſed of deceit, does not charge a ſtranger with the fault, but ſimply denies the fraud, thoſe partners, who are neither accuſers nor accuſed, may officiate as arbitrators to decide on the fraud alleged; and they may be witneſſes. An exception is mentioned, " provided they bear no enmity to either party," to the accuſed or accuſer. The meaning is, that, if there be any diſpute concerning trade in partnerſhip, the arbitration of the partners may in ſome inſtances be admitted; but the evidence or arbitration of ſtrangers or king's officers is not forbidden.

OTHERS read the latter part of the text, " let them not, from an impulſe of hatred, expel a partner on pretence of fraud." * Though naturally averſe from him, yet unable from modeſty or other motive at firſt to refuſe him, having thus, from falſe ſhame or other cauſe, once admitted a perſon not agreeable to them, ſhould they, recalling their averſion, attempt to expel him on a falſe accuſation, let the king prevent them.

How then ſhall he be cleared? In the mode mentioned by VRĬHASPATI.

X.

VRĬHASPATI:—SHOULD one of the partners be juſtly ſuſpected of fraud in buying, ſelling, *and the like*, he may be cleared by ordeal: ſuch is the rule in all controverſies.

THIS text propounds the mode of trial. " Juſtly ſuſpected of fraud;"

* [illegible] thought

thought guilty of fraud, but with ſome doubt; for, if it be certain, he cannot be cleared by ordeal. If he be not cleared by popular proof, nor be convicted of fraud, he may clear himſelf by ordeal: it is not ordained in the firſt inſtance; for a text directs, "on failure of theſe ſeveral proofs, one of the ſeveral ordeals is ordained" (Chapter II). Sufficient cauſe of ſuſpicion muſt be ſhown to ground *this* procedure upon; not merely, that he has been much employed in the tranſactions of the joint trade: this obſervation is grounded on the opinion of RAGHUNANDANA, in the *Dáyabhága tatwa*; "otherwiſe partition of heritage could never be made without ordeal, for knavery may be always apprehended."

IF one of the partners, ſkilful in buſineſs, have with much labour tranſacted ſales and purchaſes at home and abroad; and when partition is made, if he be ſuſpected of fraud; let him not in the firſt inſtance undertake ordeal, but ſay; "examine the ſales and purchaſes." Then, ſhould his ſtory be inconſiſtent, or ſhould he allege a delivery to a perſon, to whom it is not proved that any thing was delivered; in this and ſimilar inſtances, ſuſpicion juſtly ariſing, a judicial procedure is proper. But otherwiſe, his conſcience is his witneſs.

ORDEAL may be required in a caſe of fraud in regard to labour. Thus, one of ſeveral partners, bound by a previous agreement, purchaſes commodities in another country; another brings thoſe commodities home; a third ſells them at home; in ſuch a concern, goods, which were brought by water on a boat, being deſtroyed by a ſtorm, the partners, on hearing of it, ſay; "they were loſt by thy neglect;" the other replies; "I did not neglect them:" in this and ſimilar caſes *ordeal is directed*. "Such is the rule in all controverſies:" even in other caſes, in regard to loans and ſo forth, if there be ſuſpicion, the party muſt be cleared by ordeal or other evidence. Evidence in general is intended. So the *Retnácara* and *Chintámeni*.

XI.

VRÍHASPATI:—WHEN the principal ſtock or the profits are diminiſhed, in the caſe of partnerſhip, by the act of GOD or of the king, that loſs muſt be borne by all the partners in proportion to their ſhares.

When the accuſed is cleared by ordeal or other evidence; and it is proved, that the goods were loſt without any neglect on his part, by the act of God or of the king; that loſs muſt be borne by all the partners in proportion to their original ſhares. He repeats what he has before ſaid (V); or the word may be there underſtood as intending charges only (ſuch as payment of the king's taxes and the like), not loſs: but the ſame rule is extended to a loſs which happens without negligence; that is, a loſs which happens notwithſtanding the utmoſt exertions made to prevent it, or a loſs which occurs when the partner, through inadvertence, placed the goods in a perilous ſituation, without ſuſpecting the danger. According to the *Retnácara* the firſt loſs or diminution, mentioned in the text, intends loſs of capital; the ſecond, loſs of profit: and Misra gives the ſame expoſition. If the loſs be total, it muſt be proportionally borne by all the partners; if profit only be loſt, ſhall it be borne by that partner, who had charge of the concern when the loſs happened? To remove this doubt, the text expreſſes, "when the profits are diminiſhed &c." If profit be loſt with capital, it is proper, on the ground of favour, that the partners ſhould ſhare the loſs of profit; but ſhall the loſs of capital be borne by him, who managed the concern when the loſs happened? To remove this doubt the text expreſſes, "when the principal ſtock is diminiſhed &c." The ſame deciſion ſhould be given, when the profits are diminiſhed by waiting for a riſe or fall of price. An exception is mentioned in the following text.

XII.

Vrĭhaspati:—But, if one partner, acting againſt or without the aſſent of the others, by his negligence injures the common property, he alone muſt indemnify all the partners.

"Without the aſſent of the others," unknown *to them:* ſo the *Chintámeni.* It may ſignify 'not ſent to bring goods from a country where they are cheap.' It does not intend a caſe, where, having gone to that country on ſuch a miſſion, the partner, when returning thence, by accident, without the knowledge of the reſt, meets with a dangerous place: elſe, a partner could never go to a foreign country, where he muſt act without directions from all the partners, ſince they would not be preſent.

" AGAINST the aſſent of the others;" forbidden to go at that time. For example; one partner wiſhes to travel by water carriage to a foreign country: the others conſent, but ſay, " wait this day; incurſions are expected from the army of a foreign prince." The perſon employed, nevertheleſs, goes that very day; and the goods are plundered by the army of a foreign prince. In that caſe a fault is imputed to the partner acting againſt the aſſent of the others.

IN the caſe ſuppoſed, if the goods be not plundered by the forces of a foreign prince, but the boat happen to ſink in a ſtorm, what ſhall enſue? It cannot be argued, that the loſs muſt be made good by him, during whoſe management it occurs, becauſe the goods are loſt by a perſon acting againſt the aſſent of the others: the motive of forbiddance being different, the prohibition is nothing to the purpoſe. Not being wholly dependent on their commands, ſhall he not follow the road of gain, although a motive of objection be ſet forth, if he be able to counteract the cauſe of objection? Nor ſhould it be argued, that, were it ſo, the loſs muſt be borne by all. If he had not gone that very day, the boat would not have been loſt.

To the queſtion thus propoſed the anſwer is, the loſs of the boat, happening in a ſtorm, is accidental and unforeſeen: it is the act of GOD. But, if he quit the route to elude the enemy, and the boat be wrecked in conſequence, he muſt make good the loſs. Other caſes muſt be determined on the ſame principle.

" BY his negligence," is a general expreſſion, comprehending the act of GOD or of the king. It appears from this expreſſion, that a loſs, happening by the negligence of a partner not acting againſt or without the aſſent of the others, muſt be borne by all the partners.

XIII.

NA'REDA:—AND what is loſt by the negligence of one *partner* acting againſt or without the conſent of all the partners, muſt be made good *by him*.

THE import is the ſame as in the preceding text. The particle is uſed in the ſenſe of " and."

XIV.

XIV.

YA'JNYAWALCYA:—IF one partner does what the others forbid or disapprove, or if he be negligent *in doing what they allow*, and the *common* property be injured, he shall make it good; but he, who preserves it from *robbers* or *other* misfortune, shall receive a tenth part of it *as his reward*.

THE property being endangered by the act of GOD or the king without any fault on his part, if one partner preserve it by his own exertions, he shall receive a tenth part. For example; a fire accidentally happening where the whole stock is hoarded, if one partner extinguish the fire by his own exertions, or be able to save the goods, he shall receive a tenth part as his reward. So, if he recover goods sunk by a storm in the middle of the river on their way from a foreign country, throwing himself into the water at the risk of his life, and dragging them on shore, he shall receive a tenth part. Even in the ease beforementioned, if one partner, going to another province against the assent of the others, save the goods from the army of a foreign prince, by his own exertions, by insinuation, or by artifice, and gain considerable profit, it is reasonable, that he should receive a tenth part.

A TENTH part of what? It is answered, a tenth part of all the goods saved. If the partner, who goes even against the assent of the others, save the stock by eluding the enemy, or by other means, *but do not gain considerable profit*,* shall he receive a tenth part of the stock *saved*? Since the danger arose from his own fault, he is not entitled to a tenth part. But if the boat be lost by the act of GOD, and he save any goods; in that case he shall receive a tenth part of those goods; and all the partners shall divide the remainder, as ordained by the following text.

XV.

VRĬHASPATI.—IF a single partner, when danger is apprehended from the act of GOD or of the king, preserve the common stock by his own exertion, a tenth part of it shall

* I insert this reservation to reconcile this and the preceding paragraph.

be

be given to him; and all ſhall have their reſpective ſhares of the remainder.

" THEIR reſpective ſhares," in proportion to their ſhares in the original ſtock; and the perſon, who ſaved the common ſtock, ſhall have his ſhare: the tenth part is as it were his reward.

XVI.

NA'REDA:—HE, who preſerves, by his own effort, the goods of the partnerſhip, when a calamity ariſes from the act of GOD, from robbers, from the king, or from fire, is entitled by law to a tenth part of them.

WHEN danger only ariſes.

The *Retnâcara.*

XVII.

CA'TYA'YANA:—To him, who ſhall preſerve goods from robbers, water, or fire, a tenth part of their value ſhall be given: this is the rule in all ſorts of property.

" PRESERVE;" ſave.

The *Retnâcara.*

SOME infer from the expreſſion, " all ſorts of property," that, if the ſeveral property of any perſon, in danger of loſs, be ſaved by another, even in that caſe whoever ſaved it, ſhall have a tenth part of the property ſaved. That is not the opinion of CHANDE'SWARA and MISRA; for this text appertains to the title of concerns among partners. Nor ſhould it be argued, that, if a ſtranger preſerve any property belonging to joint traders, from danger of loſs, he ſhall receive a tenth part of it; but CHANDE'SWARA and others deny the reward of a tenth part, in caſe of a ſalvage of property belonging to a ſingle owner, as is expreſsly declared by them in theſe words; ' ſome hold, that the rule is the ſame in all ſorts of property, even though it ' belong to a ſingle owner, but that is not admiſſible, becauſe it is inconſiſtent

' with the title *under which the text is placed.*' This *again* is oppoſed on the ſame objection, that it is inconſiſtent with the ſubject; for the ſubject propoſed is the rule of deciſion when one of the partners preſerves the goods from robbers and the like, not when they are ſaved by a ſtranger: and it has not been ſo declared in the *Cámadhênu*, nor by HELA'YUDHA, who hold that this has the ſame import with the text of NA'REDA. CHANDE'SWARA and others hold, that the tenth part of the property ſaved ſhall not be received, in the caſe of property belonging to a ſingle owner, which is preſerved from robbers and the like. Conſequently they concur with the *Camadhênu* and with HELA'YUDHA.

WHAT then is meant by "all ſorts of property?" The profits and the principal ſtock. Or it may be thus explained; there is not, in this caſe, any ſuch diſtinction, as that which is declared under the title of loans and payment, in regard to the higheſt intereſt on gold, grain, wool, fruits, flowers and ſo forth: but a tenth part of any property ſaved ſhall be received, whether it be gold, precious ſtones, pearls, pepper, quickſilver, grain, wool, graſs or the like. This is denoted by the very expreſſion, all ſorts of property: thus the epithet "all" denies any other rule in regard to any ſort of property; no diſtinction being any where ſpecified between joint or ſeveral property: but it muſt not be objected, that, if ſuch be the caſe, whence is an exception deduced in regard to the property of a ſingle owner? It is deduced from the ſubject: conſequently the meaning is, "this is the rule in all ſorts of property, whether gold or any other commodity, belonging to perſons engaged in partnerſhip."

IF any man by his own labour, ſave the property of partners, or of any other perſon, in danger of loſs by water, fire, robbers or the like, what ſhall he receive? Although it be not ordained by the law, ſomething ſhould be given to him, as a token of reſpect, or as a recompenſe, on the authority of the law concerning other caſes, or on the induction of common ſenſe.

IT is inferred that among ten partners, if three join in ſaving any property, which is in danger of being loſt in a river, or of being deſtroyed by fire,

thoſe three perſons ſhall ſhare one-tenth part only, which ſhould be diſtributed in proportion to their reſpective exertions.

If one partner oppoſed the attempt of ſaving *the goods*, another remained ſilent, and the third approved the attempt, what is the law in this caſe? He, who oppoſed it, ſhall have no ſhare of *the gain on* thoſe goods: the perſon, who remained ſilent, ſhall have the ſhare *regularly* alloted to him: and ſo ſhall he, who aſſented to the attempt; but he ſhall receive ſomething more than the other, as is declared by Apastamba, in reſpect of thoſe, who cauſe an act to be performed, who aſſent to it, and who actually perform it: "They all ſhare the retribution in heaven, or hell; but there is a difference in the reward of him, with whom the act originates."

Who ſhall receive the ſhare of him, who oppoſed the attempt? Not all the others, for there is no law to give a title to the perſon, who remained ſilent; not the ſalvers only, for that is inconſiſtent with common ſenſe: thus, if a ſtranger ſave the property of another, which is in danger of loſs by water or the like, he is not entitled to the whole; and in this caſe, how can the preſerver be entitled to the whole, ſince he is a ſtranger in regard to the property of another? the law admits not a diſtinct kind of ownerſhip founded on union of ſtock.

The queſtion propoſed is thus anſwered; the perſon, who oppoſed the attempt, ſhall receive his proportion of the capital ſtock; therefore, the capital ſtock ſhall be divided among all the partners, after giving a tenth part of it to the ſalvers: but the profits, after paying a tenth part to the ſalver, ſhall be divided, in proportion to their ſhares, among the other partners, ſolely excluding the perſon, who oppoſed the attempt; for it will be ſhown, that even a man of crooked ways forfeits the profit only.

Is this a man of crooked ways? or does he not rather intend kindneſs? The man of crooked ways oppoſes another, leſt a ſhare of the labour ſhould fall on himſelf; it is proper he ſhould loſe his ſhare of the profit: but this man oppoſes the attempt, to preſerve his partner's life, as he would his own; he oppoſes it, to ſave him from pain, thinking the fire irreſiſtible; why ſhould he loſe his

ſhare

ſhare of the profit ?. When he oppoſed the attempt, even then he forfeited his property; the profit belongs to him, who, regardleſs of his partner's objections, and little valuing the preſervation of his own life, plunges into water, or ruſhes into fire, to ſave the property; but the partners, who aſſented, or remained ſilent, ſhall have a ſhare, for they had not abandoned the property: it is however proper, that ſomething be given to the partner, who oppoſed the attempt.

HAS he not forfeited even his principal by abandonment? That ſhould not be aſſerted, for he has not abſolutely abandoned it. When the goods were carried away by water, his reflections are; "what can be done? They are loſt irrecoverably." He does not abandon them by a declaration, that he has no further intereſt in them. Shall his condition be the ſame with that of a man of crooked ways; for even that man loſes the profit only? It is not a ſatisfactory opinion, which deems that admiſſible; for it is inconſiſtent with reaſon, that the condition of a man who intends a kindneſs, but is unable to traverſe the water, though otherwiſe qualified for buſineſs, ſhould be the ſame with that of a man of crooked ways. It muſt not be argued, that even his principal ſhould not be given to the man of crooked ways. There is no ordinance to that effect; for YA'JNYAWA'LCYA would have ſaid, "without ſtock," inſtead of ſaying, "without profit" (XVIII). Nor ſhould it be affirmed, that this law muſt be underſtood of the caſe, when toil is omitted through indolence; but, in the caſe ſuppoſed, even the principal is forfeited. It is not fit, that the property of one, ſaved by another, be retained by the ſalver, without the owner's aſſent declared in this form; "take the property you have ſaved." Neither ſhould it be argued, that all profit is forfeited by obliquity of conduct; for it is inconſiſtent with common ſenſe, that a man, who had previouſly done nothing perverſe or diſhoneſt, and had acquired profit by his own labour, ſhould now loſe all profit, on account of his conduct in a moment of great danger. No forfeiture is incurred by oppoſing the attempt, from a motive of affection or the like, without fraud; but if it be oppoſed from a perverſe motive, the profit is forfeited: the ſalver ſhall receive a tenth of the principal and profit.

IF a partner be convicted of fraud, the loſs muſt be made good by him: this is ſhown by the direction for diſtributing ſhares to all, if honeſt. His expulſion is *alſo* directed.

XVIII.

XVIII.

YA'JNYAWALCYA:—A MAN of crooked ways let the other partners expel without profit; and let a partner, unable to act, appoint another man to act for him. *

LET the partners expel a man of crooked ways (that is, a fraudulent partner) without profit, giving him his principal ſtock only: but let him, who, though not fraudulent, is unable to act, appoint for his ſubſtitute another man able to act.

The *Retnácara.*

MISRA delivers the ſame expoſition.

A FRAUDULENT partner is of two deſcriptions; one who is averſe from the performance of work, and one who embezzles property. In regard to performance of work a diſtinction muſt be admitted, as ſuggeſted by common ſenſe: the fraudulent partner forfeits the profit on that part, in regard to which he offends; not the whole profit. A partner, having bought goods without fraud, ſells them; and afterwards adopts fraudulent ways in his ſales and purchaſes; but has committed no fraud in regard to the firſt goods: in that caſe he ſhall have a ſhare of the profit; but he forfeits the profit on that part, concerning which the fraud was committed. In all caſes, however, the fraudulent partner ſhall be expelled; for fraud is ſufficient cauſe of expulſion.

IF he perform the labour directed in regard to ſales and purchaſes, but neglect the preſervation of the goods, what *ſhall follow?* If there be no ſpecifick agreement, and the ſhare of the buſineſs regarding purchaſe and ſale be performed by the directions of the other aſſociates, then, ſhould he neglect the preſervation of the goods, he *ſhall* be deprived of his ſhare in the profit; otherwiſe, the text would be unmeaning: and it is not reſtricted to neglect of buſineſs from the firſt day *of the partnerſhip.* But, if he ſay, "I have ſkill in all other affairs, but not in the preſervation of goods;" there is no perverſeneſs in him: therefore he may partake of the profit, by

* See v. XXXI.

their favour. Or the maxim, "let a partner, unable to act, appoint another man to act for him," may be applicable to this case: therefore, let him engage some other person to preserve the goods. On this point a distinction is mentioned.

XIX.

NA'REDA:—SHOULD one partner be unable to act, his heir shall undertake the work; or, if there be no heir, another *partner* who is *willing and* able to act; if there be no such person, all *the partners.*

"DISABILITY;" calamity, or incompetence: meaning calamity from a moral cause. "Heir;" the son and so forth. "If there be no heir;" if the heir be unfit or unable, or if there be no heir present, another partner, who is able to act for both, shall undertake the preservation of the stock; if there be no such person, all the partners; for partners must be necessarily understood, since it would be improper to understand "all," as intending the world at large; and, from the context, partner must be understood even in the middle of the text: thus "heir" most be understood of a partner; and the term comprehends kinsmen. If one partner be disabled, he, among the partners, who is heir to the disabled partner, should undertake his work; if he refuse it, let the king *formally* appoint him; no other can act for him, if there be an heir capable of acting. But, if there be no heir, or, if he be incapable of acting for both, let another, who is able to act for both, undertake the work. Thus "able" is pertinent: otherwise it would be unmeaning; since a capable person may be unable to act as a substitute. The appointment of the substitute is referred to the king, because there is no other person to whom it could be referred.

IF there be no such capable person, let all the partners preserve the goods. The texts of YA'JNYAWALCYA and others (XIV &c.) being applicable to the present case, the saver or savers shall have a tenth part of the property saved. This is inferred by CHANDE'SWARA.

IF partners be understood in this text, another person may not be employed

at

at the choice of the principal, on whom it is incumbent to preserve the goods. This *objection* is not consistent with reason, for *even* the heir may not be employed unless he be included in the partnership. Nor should it be argued, that the same rule may extend to a separated kinsman, if there be no undivided brethren capable of *acting*; for such an extension of the rule has no foundation in any ordinance, or in the reason of the law. Nor should it be argued, that the rule is grounded on the reason of the law; because otherwise the word "able," in the text of NA'REDA, would be unmeaning: it may be taken as a descriptive epithet *nearly superfluous*. If another person may not be employed at the choice of the principal; then, of course, the partners should preserve the goods, and receive a tenth part as their reward.

MISRA, thinking the application obvious, has not expressly said, that the heir, and other persons mentioned in the text, are included in the partnership. It should not be objected, that MISRA expounds the text, "should one *partner* die &c;" how then should another person be employed at his choice? MISRA therefore could not have contemplated such a construction. Still it is difficult to disprove the supposed disqualification of his heir not included among the partners. We therefore hold it proper in this case, to follow the exposition of CHANDE'SWARA, "If one partner be unable to act, let his heir undertake *the preservation of the flock &c*:" and in this case another person cannot be employed at his choice: but, if there be no son or *near* heir, a more distant heir, included among the partners, should undertake it; next, another *partner* able *to act*; or if there be no such person, all the associates. Such is the successive order. The son of a disabled partner being properly under his authority, it is not necessary, that another heir should be employed, if a son be forthcoming; but on failure of a son, he should be employed: otherwise the special mention of "heir" in the text would be an unmeaning repetition. It should not be argued, that, if another act *for a disabled partner*, although an heir exist, the text is propounded to show that the heir, complaining before the king, may prevent it. There is no argument for selecting this limited construction. If the heir refuse the undertaking, and another partner accept it, then his employment is not disputed. In fact the heir ought to perform the work, because such is the actual course; for, on the death of the father, his obligations devolve on the son: but, in his default,

fault, a ſubſtitute ſhould be appointed. Therefore the *Retnácara* ſhows, that the heir ſhall receive a tenth part of property ſaved by him. If the perſon be ſelected at the choice of the principal, he ſhall receive a tenth part or other reward, as may be agreed on between them: but for others, the reward is a tenth part of the property ſaved; for it is ordained by ſages treating of the ſame ſubject. A tenth part of what? Shall it be a tenth part of the principal ſtock and profits; or of the profits only? On the firſt ſuppoſition in what does the ſituation of the partner differ from the ſituation of one who forfeits his ſhare of profit, ſince the gain does not always exceed a tenth part of the principal? On the ſecond ſuppoſition, he, who ſaves the ſtock only, would have no reward. Both objections are wrong: for the ſituation of the partner does differ when the gain may exceed a tenth part; and, if the principal ſtock only be preſerved, the reward *paid* may be replaced by a ſhare of future profit. But the rule of deciſion is this; a tenth part of the property ſaved, both the principal ſtock and the profit *being preſerved*, ſhall be received by the preſerver of it; and this rule concerns property ſaved by exertion, not by the act of GOD while the partner merely talked of ſaving it.

HIM, who embezzles the joint ſtock, let the partners expel without profit, after taking back the property embezzled. Loſs of profit ſhall be his puniſhment; for no diſtinction is mentioned, in regard to fraudulent partners, in the text of YA'JNYAWALCYA (XVIII).

IF any trader die, what ſhall be done in that caſe? This queſtion is anſwered in the following text.

XX.

NA'REDA:—IF any travelling merchant, coming from a foreign country, ſhould die, the king ſhall keep his ſtock, until his heir appear.

2. SHOULD he have no kinſman in a direct line, let the king deliver it to perſons allied to him, or to collateral kinſmen; and if no ſuch heir appear, let him keep it well guarded for ten years.

3. SUCH

3. SUCH property without an owner, and without a claimant as heir to the deceaſed, let the king, when it has been kept ten years, appropriate to his own uſe: thus juſtice will not be violated.

MISRA thus interprets the texts; if one of ſeveral partners die, it is directed by the preceding text (XIX), that his heir, another partner, or all the partners, ſhall preſerve the ſtock; but, if all the partners die, the rule for that caſe is delivered in theſe texts (XX). According to his opinion, if one partner die, there is no reference to the king: but his partners ſhall preſerve his ſtock, and deliver it, as the king is directed to do, to his heirs, near kinſmen, or collaterals: on failure of theſe, let it be delivered to the king, like an *eſcheated* inheritance.

BUT according to CHANDE'SWARA, the firſt text (XIX) deſcribes the perſons, who ſhould preſerve the ſtock of a living partner when diſabled: and the rule, in caſe of death, is declared in the ſubſequent text (XX). Conſequently, if one of the traders die, notice ſhould be given to the king; and the king ſhall preſerve his ſtock, and afterwards deliver it to his heirs, when they appear; retaining a twentieth or other portion of it (XXII), as a recompenſe for his care: but, on failure of heirs, he may appropriate the whole to his own uſe. A diſtinction will be mentioned in explaining another text. This is *alſo* to be underſtood of a caſe, where all the traders are deceaſed.

OTHERS hold, that, if any trader be unable to act, his ſon, as heir, ſhall perform his work; in default of the heir, any partner, or other perſon, appointed by the principal, ſhall perform it, and receive ſuch compenſation as may be ſtipulated; but, if ſuch perſon be not able to act, all the partners. A tenth part being directed by ſages for a caſe of ſalvage only, if the whole work be done, the recompenſe ſhould be the half or other proportion of the profit, according to circumſtances. The expreſſion, "ſhall undertake it" (XIX), is not underſtood merely of ſaving the ſtock, but of buſineſs concerning the ſtock: and this has been declared by YA'JNYAWALCYA; "Let a partner, unable to act, appoint another man to act for him;" it is not poſitively required, that the ſubſtitute ſhall be one of the partners. But NA'-

REDA expresly says "another," *that he may be employed or not* according to the possibility or impossibility *of appointing a kinsman*, and without any further meaning; for it is troublesome to establish a distinct regal duty, while the text may be explained as a mere repetition of a meaning which was obvious. It should not be argued, because a direct precept is preferable to a vain repetition, that it is therefore necessary to establish *it* a royal duty *to appoint the substitute*, since the text would be otherwise unmeaning: were it so, since another is commanded to perform the work in default of the heir, and, if he be unable to perform it, all the partners being bound to undertake it, the last case is superfluous; but there is nothing superfluous, if it convey a *general* precept, since no objection exists *to such an interpretation*. If the man himself be unable to act, a substitute must in all cases act for him; and, if there be no heir, any person may be appointed under the text of YA'JNYAWALCYA; or if none be appointed, the heirs or others, included in the partnership, are declared by NA'REDA to be the proper substitutes: but if the partner die, the rule of decision is delivered in the subsequent texts, "If any travelling merchant &c." (XX).

THIS exposition seems accurate: let it be examined by the wise. We proceed to explain the texts of NA'REDA. "Coming from a foreign country" (XX), travelling from one country to another, or arriving in a foreign country. Consequently such is the rule, if a merchant die on the road, or in a foreign country: and this is merely an instance; *for* nearly the same rule of proceeding must be understood, if he die in his own country. MISRA reads *préyád abhyágató'pi vá* instead of *préyád abhyágató vanic* the sense is the same, and obvious. What king? The king, in whose dominions the merchants have their abode? Or the king, into whose dominions they have come for the purpose of trade? The king, in whose dominions they trade, is considered as their second king, because he receives taxes and protects them: therefore that king, hearing of a merchant's death, shall preserve his stock, and send intelligence of his death to the heirs, by means of a messenger. This is inferred from the expression, 'until his heir appear.' If there be an heir, the property of another is like poison to the king who appropriates it; therefore he should immediately relinquish it. When the heir appears, what is to be done? The stock should be delivered to him; otherwise his appearance is useless. The following text is explicit. XXI.

XXI.

VRĬHASPATI:—IF one of the traders in partnerſhip happen to die, his ſhare in the ſtock muſt be produced before officers appointed by the king;

2. And when any man ſhall appear, calling himſelf heir to the deceaſed, let him prove his right of ownerſhip by *the teſtimony of* other men, and then let him take his property.

" OFFICERS appointed by the king" to receive taxes from foreign traders: before thoſe officers, as a channel of communication with the king, his ſhare of the ſtock muſt be produced by his aſſociates. " Heir to the deceaſed," ſuch as ſon or other perſon entitled to the ſucceſſion: let him prove his right, as ſon, kinſman, or partner, by the teſtimony of other men. NA'REDA declares the diſtinctions of title to the ſucceſſion (XX 2). If there be no kinſman in a direct line, let the king deliver it to perſons allied to the deceaſed, his wife and the reſt: on failure of theſe, collateral kinſmen are entitled to receive it. CHANDE'SWARA ſays, " on failure of theſe, his collateral kinſman ſhall receive it:" and HELA'YUDHA ſays, " on failure of paternal kinſmen, the ſucceſſion devolves on the maternal uncle and the reſt." Conſequently the wife, the daughter, the daughter's ſon, the father, the brother and the reſt, and the maternal uncle and other heirs mentioned under the head of inheritance, are entitled *to receive the ſtock* in the regular order of ſucceſſion. In the text of NA'REDA (XX 2), " if no ſuch heir appear" ſignifies if the heir do not attend, or if it be proved, that no ſuch heir exiſts.

IF the ſtock be delivered to heirs, a part ſhall be retained by the king as a recompenſe for his care of it. VRĬHASPATI ordains it.

XXII.

VRĬHASPATI:—LET the king receive a ſixth part from the property of a *Súdra;* a ninth from that of a *Vaiſya;* a twelfth from that of a *Cſhatriya;* a twentieth from that of a *Bráhmana;*

2.

2. But after three years have elapſed, if no owner of the goods appear, let the king take the whole; but the wealth of a *Bráhmana* he muſt beſtow on *Bráhmanas*.

A SIXTH part and ſo forth from a *Súdra* and the reſt in order as enumerated; for it is a rule, that terms mentioned conſecutively are ſeparately referred *to the correſpondent terms:* conſtruction by *the* correſpondent order *of terms* may be exemplified as it has been uſed by a great poet, and in other inſtances: "the charms of the lyre, of the wreath of jaſmine, of the blue lily, are ſurpaſſed by her delightful voice, her ſmiles, and her enchanting glance." Conſequently the king ſhall receive a ſixth part from a *Súdra*, a ninth part from a *Vaiſya*, and one part in twelve from a *Cſhatriya*.

How can it be ſaid, that any part ſhall be received from the property of a *Súdra*, ſince commerce is forbidden by MENU to a *Súdra*, as a man of inferiour claſs?

MENU:—A MAN of the loweſt claſs, who, through covetouſneſs, lives by the acts of the higheſt, let the king ſtrip of all his wealth and inſtantly baniſh.

FOR commerce is declared to be the profeſſion of a *Vaiſya*, whoſe claſs is ſuperiour to that of the *Súdra* (Book I, v. IV). It ſhould not be argued, that the text of MENU ſuppoſes times free from diſtreſs. MENU, permitting *Bráhmanas* to follow trade in times of diſtreſs, forbids the ſale of liquids &c. (Tranſlation of MENU, Chap. 10, v. 86); declaring the means of ſubſiſtence for a military man in times of diſtreſs, he forbids his recourſe to the higheſt function (ibid. v. 95); and, ſubjoining the text quoted, MENU expreſsly directs, that a man of the loweſt claſs, who lives by the acts of the higheſt, even in times of diſtreſs, ſhall be puniſhed by the king.

To this it is anſwered, that the text muſt be underſtood of a profeſſion different from that of the *Vaiſya*. Thus the text of YA'JNYAWALCYA is pertinent; "a *Súdra* ſhould ſerve twice-born men; but, if he cannot thus ſubſiſt, he may become a trader:" and the profeſſion of a huſbandman is

allowed

allowed to the *Súdra* by the *Nera-sinha purána*, "let him rely on agriculture for his subsistence." On this ground the practice of moneylending by a *Súdra* has been mentioned in the first book on loans and payment. In fact, at this time, men of the commercial class being few, though a distinction has been ordained, their occupations are followed by *Bráhmanas* and by men of mixed classes. The rank of a *Súdra* being attributed to *degraded* men of the military and commercial classes and to men of mixed classes, and RAGHUNANDANA acknowledging that they become *Súdras* by the neglect of their proper duties, it is fit that a sixth part should be received by the king from them also. If men of the *Ambashtha*, *Múrdhábhishicta* and other classes, who claim the rank of *Vaisya* and *Cshatriya*, have not for many generations performed the ceremonies ordained by the *Véda*, in the form observed by *Súdras*, or if they revert to the duties of their own class after expiation, the rate of the deduction ought to be regulated accordingly. But RAGHUNANDANA acknowledges that a military man, though not of a mixed class, may be degraded to the servile class, under the text of MENU,* in which he expounds "gradually," by small degrees; "servile class," the rank of a *Súdra*; and "*Bráhmanas*" the scripture.

MENU:—THE following races of *Cshatriyas*, by their omission of holy rites and by seeing no *Bráhmanas*, have gradually sunk among men to the lowest of the four classes.

RAGHUNANDANA also admits the same in regard to men of the commercial and other classes. But this is not the opinion of CULLU'CABHATTA. Some persons of the *Ambashtha* and other classes, observing the duties, and assuming the title, of a *Cshatriya* or *Vaisya*, act as men of the military and commercial classes; some act as persons of the servile class; and some follow the profession of their mother's class. The decision should be regulated by usage, or by the opinion of RAGHUNANDANA. More on this subject may be sought under the title of mixed classes.

"BUT after three years have elapsed, if no owner of the goods appear" (XXII 2): if the person, *to whom notice is given*, send a message, that he is

* Erroneously cited as a text of NA'RADA. I find it in MENU, Chapter 10, v. 43.

ſick, and will ſubſequently attend; or ſend a meſſage, or himſelf ſay, that the deceaſed has left a grandſon, who will ſubſequently attend; but if no heir do appear, then let the king take the whole; but the wealth of a *Bráhmana* he muſt beſtow on other *Bráhmanas:* ſo the *Retnácara.* The meaning is, that, as the heritage of a *Bráhmana* cannot be taken by the king, ſo, even in this caſe, he may not appropriate the eſcheat.

XXIII.

MENU:—THE property of a *Bráhmana* ſhall never be taken *as an eſcheat* by the king; this is a fixed law: but the wealth of the other claſſes, on failure of all *heirs*, the king may take.*

2. LET the king take all property, to which there is no heir, except that of a *Bráhmana:* but let him beſtow the wealth of a *Bráhmana* on prieſts learned in the *Védas.*

IF that be the caſe, how is he permitted to receive a twentieth part from the property of a *Bráhmana*? It ſhould not be argued, that there is no offence, becauſe it is received as wages: it is merely implied in the text quoted (XXIII 1), that the property ſhall not be taken, on the ſuppoſition of a title *to inherit ſuch property*; but the king may even ſell the ſtock to a *Brahmana.* Were it ſo, taxes being the wages of protection, even the receipt of taxes from a prieſt would be admiſſible. Therefore does MENU forbid it.

THAT is denied; for taxes are not the wages of protection, but are received by the king, becauſe he has a title in the ſoil. Nor ſhould it be objected, that they ſometimes appear to be his wages, like ſacrificial fees *paid to prieſts.* Sacrificial fees are not real wages: if they were, there would be no diſtinction of fees for two ſacrifices equally laborious. It is diſhonourable in a king, any how receiving taxes, not to protect *all his ſubjects;* as it is in any man, to omit the rites preſcribed to his claſs, at dawn, noon and eve.

* Book V, v. CCCCXLIII.

DOES

Does not the king receive his revenue from the person, who enjoys the produce of a soil, in which the king has an interest, as he receives hire of *his own* house or chattel from the person who uses it? The law has prohibited the taking of such wealth belonging to *Bráhmanas*; for the property of a deceased *Bráhmana*, acquired by commerce, his heritage and debts, might *otherwise* be received on account of the interest the king has in the soil: but it is admitted, that the king has an original property by occupancy in his own house *now* let on hire; not merely a property as king: consequently he must avoid taking a *Bráhmana's* wealth, in right of a property in it as king. This subject has been sufficiently explained. But if the wealth of a deceased *Bráhmana* be not accepted by *Bráhmanas*, then let the king cast it into water (Book I, v. CCXXXI 2).

In the third verse of Na'reda (XX 3) "property without an owner" is explained by Chande'swara, property the owner of which is deceased: "without a claimant as heir," without a claimant entitled to receive it. It must be understood of all persons, other than the king, who are entitled to succeed, including the fellow student in theology, as declared almost expressly under the title of inheritance.

XXIV.

Na'reda:—What is ordained concerning one of several *persons or things*, whose nature and properties are the same, must be extended to all; for they are pronounced similar.

The periods of detention, three years and ten years, are contradictory (XX 2 & XXII 2). The following text again propounds a different period.

XXV.

Baudha'yana:—Property without an owner, which had not belonged to *Bráhmanas*, the king may take for himself, having kept it one year.

"Which had not belonged to *Bráhmanas*;" which belonged to any other than a *Bráhmana*, that is, to a *Cshatriya* and so forth.

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CHANDE'SWARA thus reconciles the apparent contradiction, *in regard to the period of detention, one, three, and ten years;* the period is proportioned to the time required for the heir to appear, according to the remoteneſs of his reſidence, diſtant, more diſtant, or moſt diſtant: and MISRA gives a ſimilar expoſition.

WHAT is diſtant? what, more diſtant? and what, moſt diſtant? It cannot be ſaid, that, if the heir reſide in the king's own dominions, his reſidence is ſimply diſtant; in another realm immediately adjoining, more diſtant; or, if another kingdom intervene, moſt diſtant. At the time, when one merchant died, a foreign realm intervened between the king's dominions, and the town whence that merchant came: ſince he was ſettled at the greateſt diſtance, his ſtock muſt be kept ten years. Afterwards, that king happening to conquer both realms, and ſome merchant from the ſame town dying, his ſtock may be appropriated after keeping it one year; ſince the place is now included in the king's own dominions. This would be a great diſparity.

THE difficulty may be reconciled on the opinion of RAGHUNANDANA, delivered in the *Udvâhatatwa*, in explanation of the term "different country."

XXVI.

Vrĭhat-MENU:—WHERE language differs, and where a mountain or great river intervenes, it is called a different country.

2. HOWEVER near, countries parted by a river of the ſame name are called diſtinct countries by the ſelf-exiſtent himſelf:

3. And ſo *are countries*, whence intelligence is not received in ten nights.

XXVII.

VRĬHASPATI:—SOME call the ſpace of ſixty *yójanas* a diſtinct country;

country; ſome, the ſpace of forty *yójanas;* others again, the ſpace of thirty *yójanas.*

To reconcile the diſtinctions grounded on language and on diſtance, RAGHUNANDANA thus explains the texts: if the three *circumſtances of difference* exiſt, *the countries are diſtinct* within the diſtance of thirty *yójanas;* or if two exiſt, and the diſtance be greater than thirty *yójanas;* or if one exiſt, and the diſtance be not leſs than forty *yójanas:* but within ſixty *yójanas,* if the language does not differ, nor a mountain or great river intervene, it is not a foreign country: ſo the *Suddhi Chintámeni.*

CONSEQUENTLY this is intended by the term diſtant: if two *of the circumſtances mentioned* exiſt, and the diſtance exceed ſixty *yójanas,* the country is more diſtant; and if the three exiſt, moſt diſtant: but one of thoſe circumſtances muſt almoſt ever occur where the diſtance exceeds ſixty *yójanas.* "However near &c." (XXVI 2); however near, (within the ſpace of forty *yójanas,*) if the name of the countries differ, and a river intervene, they are called different countries. Some thus explain the texts. But others hold, that, if a river, or large body of water, of the ſame name with the countries, intervene (ſuch as the river *Sindhu* and others), the countries, however near, are called diſtinct countries: thus the eaſtern bank of the dangerous river *Sindhu* is a different province from the weſtern bank, both provinces bearing the ſame name with the river: and ſo *Pánchanada, or the region of five rivers* (meaning the *Sindhu* and other ſtreams), is the name of a country.

"AND ſo, whence intelligence &c." (XXVI 2): this muſt be underſtood as a deſcription ſimilar to the diſtance of ſixty *yójanas.* Or it may be thus explained: a place within a country of the ſame name is diſtant; no other country intervening, a bordering province is more diſtant; another country intervening, the remoter province is moſt diſtant: thus north *Rárh'ha** is diſtant from ſouth *Rárh'ha;* *Magad'ha* is more diſtant; *Cási,* moſt diſtant. Many other caſes may occur, but theſe may be ſettled in a ſimilar mode, under the texts quoted.

* Pronounced *Rár;* the region weſt of the *Bhágíra'thí* river.

What is the rule, if the merchant's place of abode were near? The ſtock muſt be kept ſo long as the heir be expected to appear. In fact, on all occaſions, ſufficient time ſhould be allowed: a ſpecifick period is merely mentioned illuſtratively. The king may appropriate the ſtock of a deceaſed trader, at the expiration of one year, after aſcertaining from his kinſmen in the ſame town, that there is no heir in a diſtant country, if it were ſuppoſed that ſuch an heir exiſted. But if it happen, that an heir afterwards appear, and proving his *right of inheritance*, claim the *ſtock*, what ſhall be done in that caſe? Without relying on the king's property in that ſtock, it ſhould be delivered to that heir, even though it have been given to ſome other perſon; for a gift without ownerſhip is void. Let it not be objected, that the king is conſequently guilty of theft; for there is no theft in diſpoſing of property, not knowing it to belong to another.

Shall the king pay intereſt or not? He ſhall not pay intereſt; the text of Samverta (Book I, v. LXXII) forbidding intereſt on a ſum, which was not originally known to be due.

It muſt be noticed, that a ſpecifick time is appointed by ſages for the cuſtody of ſtock by the king; but no ſpecified period being appointed for the cuſtody of it by a partner or a ſtranger, the principal ſtock would be annihilated, if ſuch perſon were entitled to a tenth part of it for every moment of its cuſtody: therefore one tenth part of it ſhall be received for the cuſtody of the ſtock until it be ſold; but, if it be abandoned in the interval, wages only ſhall be received. If it happen, that the goods are ſold the next day after they were bought, a tenth part ſhall be received even for one day's cuſtody; and the ſame allowance muſt neceſſarily be admitted, even for one year's cuſtody, if the ſale be made at that interval of time: for no ſpecifick period having been appointed for cuſtody, a ſhare cannot be allowed on that account. Cuſtody by the king has been ordained, not the tranſaction of buſineſs regarding the ſtock; but if the buſineſs be tranſacted by the king's own choice, through the channel of his officers, he ſhall receive a greater proportion of the ſtock.

SECTION II.

ON PARTNERSHIP AMONG PRIESTS JOINTLY OFFICIATING AT HOLY RITES.

XXVIII.

NA'REDA:—SHOULD a prieſt officiating at holy rites be diſabled, let another in like manner perform his work, and receive from him the ſtipulated ſhare of the gratuity.

"DISABLED;" the term is ſo explained in the *Retnácara* and *Vivádá-Chintámeni*. The expreſſion, "in like manner," extends the law of commerce to this caſe: but in commerce, if one partner be diſabled, his work ſhall be performed by another; and RAGHUNANDANA, in the *Malamáſa tatwa*, admits the extenſion of the law for ſecondary caſes to the primary or principal caſe. In the former text (XVIII) the ſame word ſignifies "diſabled;" and the ſequel expreſſes, that "the heir ſhall undertake the work." The expoſition therefore appears accurate.

"ANOTHER;" his ſon or other heir; on failure of an heir, a partner able to perform the work; or if there be none ſuch, a ſtranger. This muſt be underſtood, as it has been already declared *in the preceding ſection*: but the ſubſtitute does not receive wages, as in commerce; for he would be a hireling, if he received wages generally; and a reward equal to a tenth part is not proper in this caſe. Thus a prieſt, engaged in a ſacrifice, falls ſick after the firſt day; afterwards, a ſubſtitute performs his work during ten days; if the ſubſtitute received a tenth part, and the prieſt, firſt engaged, received the whole of the reſidue, their rewards would be very diſproportionate: but in commerce, there is no ſuch diſproportion; for the ſubſtitute is paid by the trader out of his own ſtock. On this conſideration the ſage propounds the

reward: "and receive from him &c;" meaning, that the law of commerce is not extended to this part of the case.

"STIPULATED;" what has been stipulated by the substitute for the performance of the work, and has been promised by the priest who was first engaged.

XXIX.

VRĬHASPATI:—So, if one of several persons, jointly engaged in *sacrificing or other* work, should be disabled from acting in it, let his part of it be performed by a kinsman, or by all the other associates.

"WORK;" sacrifice or the like. The *Retnácara.*

MISRA inserts this text with an observation, that "VRĬHASPATI declares the law generally." It is inserted by both, under the title of priests officiating at holy rites: the inference will be mentioned.

So, if one of several persons, jointly engaged in commerce or other business by a man disqualified through incapacity or otherwise, should be disabled from acting in it, his part of it should be performed by a kinsman; or, on failure of a kinsman, by all the other associates. Such is the meaning of the text.

IT may be so in commercial cases; but how should that be done in the instance of a sacrifice? for, a sacrifice being performed for the benefit to accrue therefrom, it is contrary to rule, that the work of one should be performed by another; and two such rites cannot be performed at once by the same person, since it is forbidden to perform at once two rites of a different nature? The answer is, it may be performed according to the distinctions of sacrifice: if a hundred thousand sacrifices be undertaken, five or six persons being engaged to officiate as *Hótá*, or reader of the *Rĭgveda*, should one be disabled, his part of the work may be performed by the others; and all admit that the *Hótá* may officiate as *Brahmá*, or superintending priest.

If this text, expreſſing work generally, be conſidered by Misra as relating to all caſes, whether commercial or otherwiſe, why has it not been inſerted in the firſt ſection on partnerſhip among traders? The anſwer is, it is inſerted here, to ſhow, that ſuch a rule exiſts in regard to partnerſhip among prieſts officiating at holy rites. It ſhould not be objected, that this text relates to commerce only, becauſe it coincides with the text of Na'reda on the ſubject of commerce (XVIII). Its application to holy rites, deduced from the comprehenſiveneſs of the expreſſion, cannot be abandoned; and all difficulties are removed by admitting this rule in partnerſhip among officiating prieſts. Sanc'ha and Lic'hita concur alſo in directing the ſubſtitution of a kinſman.

XXX.

Sanc'ha and Lic'hita:—If an officiating prieſt die before the ſacrifice be completed, his kinſman ſprung from the ſame original ſtock, or his pupil, ſhall complete his part of the work; but if he have no kinſman, let another prieſt be engaged.

It is implied, that his kinſman, or pupil, ſhould complete his part of the work, as a favour conferred on him: if they do not perform it, another perſon muſt be ſought. The next in ſucceſſion need not be ſelected, as in caſes of inheritance; for the ſame rule *of ſubſtitution* is applied by Vrihaspati to the other aſſociates: and the law is the ſame in commercial caſes. But if they require a ſhare of the gratuity, it muſt of courſe be given.

Is not the text ſuperfluous, for the general law requires, that, if the father be diſabled, the ſon muſt perform what ſhould have been done by him? No: for, ſhould the ſacrificer ſay, "this man has fallen ſick, I appoint another to perform his part of the work, his ſon ſhall not perform it;" the text would ſerve to prevent ſuch conduct. It therefore appears, that, if a prieſt, engaged *to officiate* at ſolemn rites, be *diſabled*, the ſubſtitute ſhould be appointed by him. The prieſt being bound to perform the rites by an engagement in this form, "I will act according to the beſt of my

knowledge;" ſhould he be diſabled, it is proper, that he ſhould provide the ſubſtitute: otherwiſe he would be guilty of a moral offence, not effecting the work he had engaged to perform: and it muſt be underſtood, that the form of appointment is this, "I engage you to perform ſuch a work undertaken by me."

XXXI.

YA'JNYAWALCYA:—A MAN of crooked ways let the other partners expel without profit; and let a partner, unable to act, appoint another man to act for him: this law is declared for partnerſhip among prieſts, who jointly officiate at holy rites, and among huſbandmen or artificers.

THIS ſhows, that the perſon, unable to act, ſhould make the appointment: in commerce, the ſubſtitute ſhould be choſen by him, not by the other partners; and, that law being extended to partnerſhip among prieſts by the terms of the text, it appears, that the perſon, who is unable to act, ſhould appoint the ſubſtitute.

VA'CHESPATI BHATTA'CHA'RYA holds, that another prieſt ſhould be engaged by the ſacrificer, if the prieſt, firſt engaged, be defiled; for his defilement diſqualifies him for appointing a ſubſtitute. Even in other ſimilar caſes, another prieſt ſhould be appointed by the ſacrificer. But it is not incongruous to ſay, that another prieſt ſhould be appointed with the approbation of the prieſt firſt engaged.

IF the ſon or pupil of the perſon, who is unable to act, be not equally ſkilled with the father in performing the rites undertaken, the ſacrificer may reject him: ſuch is the induction of common ſenſe. But if the perſon, appointed by the officiating prieſt, be equally capable with himſelf, he ſhould not be rejected: or if the ſacrificer cannot produce a perſon ſuperiour to him who was ſelected by the officiating prieſt, then alſo the perſon engaged by the officiating prieſt ſhall perform the work: or ſhould the officiating prieſt provide a ſubſtitute equal to himſelf, and the ſacrificer

provide

provide one ſuperiour to him, even then the perſon provided by the officiating prieſt ſhall perform the work; for it is not proper, that the ſacrificer ſhould now require a perſon of ſuperiour qualifications. In the ſame mode, further rules may be eſtabliſhed.

XXXII.

MENU:—IF an officiating prieſt, actually engaged in a ſacrifice, abandon his work, a ſhare only, in proportion to his work done, ſhall be given to him by his partners in the buſineſs, *out of their common pay.*

IF he abandon his work, by reaſon of ſickneſs or the like, a ſhare of the ſacrificial fee ſhall be given to him, in proportion to his work done.

The *Retnácara.*

So likewiſe VA'CRESPATI and CULLU'CABHATTA. But if he wickedly abandon his work, a diſtinction is taken, which will be mentioned.

XXXIII.

MENU:—BUT, if he diſcontinue his work *without fraud*, after the time of giving the ſacrificial fees, he may take his full ſhare, and cauſe what remains to be performed by another prieſt.

IN ſacrifices and other holy rites celebrated according to the forms of MADHYANDINA, the fees are directed to be paid in the middle of the ceremony. In ſuch a caſe, if an officiating prieſt be diſabled after the payment of the fees, he may take his *full* ſhare, and cauſe the work to be completed by another. Such is the expoſition of CULLU'CABHATTA; but MISRA, giving the ſame expoſition, explains "another prieſt," a ſon, &c: this, however, may be underſtood as alſo intended by CULLU'CABHATTA.

"HIS full ſhare;" his ſhare on a partition with the other officiating prieſts. If there be no ſon, what ſhall be done? It ſhould not be ſaid that, cauſing the work to be performed by another, the diſabled prieſt ſhould

give

give him wages; or, if he perform it as a favour, there is no objection to the omiſſion of wages: but the expreſſion, "he may take his full ſhare," ſuppoſes the work to be completed by his own ſon. Were it ſo, the text would be ſuperfluous. Nor ſhould it be ſaid, that the text intimates this diſtinction; if the diſability ariſe before the fees are paid, the ſacrificer ſhould engage another prieſt, and, dividing the gratuity, pay a ſhare to each; but if the fees have been paid, the prieſt, who has received his fee, may appoint another ſelected by himſelf. There is no ground for a diſtinct preferable right of the officiating prieſt, and ſacrificer, to appoint the ſubſtitute before, or after, the payment of the fee. Until the ſacrifice be completed, there is apprehenſion of failure in the ceremony: elſe what remained, need not be performed.

To this queſtion ſome reply, the fee, received by the officiating prieſt, becomes his abſolute property. How ſhould the ſubſtitute, afterwards completing the work, be entitled to receive a ſhare of it from him; for the ſacrificer's act of religion would be impaired, if he gratified one prieſt out of the property of another? Therefore, ſhould a perſon, different from the ſon or other heir, complete the work, he is entitled to receive ſome additional recompenſe from the ſacrificer. The fee for a ſpecifick part of the ceremony having been already paid, how ſhould a gratuity be afterwards payable to the ſubſtitute, ſince it is not ordained by the law? This objection is wrong; for the general law ſhows, that fees ſhould be paid by way of recompenſe.

XXXIV.

Purána:—THE man, who obtains, by falſe pretences, a *Bráhmana's* recital *of holy texts,* or pays not the due reward, will certainly go to a region of torment.

THIS is moral law, not the law of judicial procedure; conſequently, ſhould the ſacrificer defy hell, whence ſhall the ſubſtitute, who completes the work, obtain his wages? Labour unrewarded is not conſiſtent with judicial law. Should he not therefore receive a recompenſe from the officiating prieſt? and even though a gratuity be given to him by the ſacrificer,

ſhall

ſhall he not receive a ſhare of the fee from the officiating prieſt? Since MENU directs, that the prieſt firſt engaged may take his full ſhare, a fee by way of recompenſe from the employer, being required by moral law, ſhould alſo be eſtabliſhed as requiſite under the law of judicial procedure; for the text intends it. But when a ſon is the ſubſtitute, he is ſufficiently recompenſed by the gratuity paid to the father; conſequently there is no difficulty, even though another fee be not paid.

THE ſubſtitute ſhould be appointed by the officiating prieſt, even in this caſe (namely, where the fees have been already paid); for he has agreed to perform the work: but if the prieſt, not afraid of violating his engagement, refuſe to appoint another perſon, let the ſacrificer engage another prieſt, that his buſineſs may be effected; whether it be a ſacrifice according to the forms of MADHYANDINA, or other ſolemn rites, ſuch as the *jyótiſh tóma* and the like. In this caſe, if the fee have not been already paid, the ſhare ſhould be ſubdivided: but, if it have been paid, it is obvious, *that the full ſhare ſhall be retained, and a ſeparate recompenſe be given to the ſubſtitute.*

IT ſhould not be argued, that the act *is perfect* at the moment when the ſacrificer has engaged the prieſts. As hunger is not ſatisfied, before victuals are prepared, merely by commencing their preparation; ſo the benefit of ſolemn rites, yet unperformed, is not ſecured by the mere undertaking.

PAYMENT of fees in the middle of the ceremony is now practiſed, in conformity with the opinion of RAGHUNANDANA, at the *Durgápújá*, and other feſtivals: the ſame form ſhould be there obſerved in regard to the appointment of prieſts; for the reaſon of the law is equally applicable.

MENU himſelf propounds the ſhares in particular ſacrifices, as an example of the diſtribution of fees, to which the expreſſion, "*his full ſhare*," alludes.

XXXV.

MENU:—WHERE, on the performance of ſolemn rites, a ſpecifick fee is ordained for each part of them, ſhall he alone,

who performs that part, receive the fee, or shall all the priests take the perquisites jointly?

2. *At some holy rites*, let the *Adhwaryu*, or reader of the *Yajurvéda*, take the car, and the *Brahmá*, or superintending priest, the *fleet* horse; let the *Hotá*, or reader of the *Rigvéda*, take the *other* horse, and the *Udgátá*, or chanter of the *Sámavéda*, receive the carriage, in which the purchased materials of the sacrifice had been brought.

3. *A hundred cows being distributable among sixteen priests*, the four chief, *or first set*, are entitled to *near* half, *or forty-eight*; the next four, to half of that number; the third set, to a third part of it; and the fourth set, to a quarter.

At those solemn rites, in which specifick fees are ordained to be paid for each part of them, at the commencement and so forth, shall he alone, for whom the fee is paid, take it; or shall he receive a deduction only, and all the priests take and divide the perquisites? On this doubt, the legislator propounds this text (XXXV 1). Cullu'cabhatta.

"He alone, who performs that part, shall receive the fee;" where specifick fees are ordained by law for each part of the rites, payable to the persons officiating as *Brahma* and so forth, they shall receive those several gratuities, whatever be the amount; and not throw the fees together, and divide the whole. The import of the subsequent phrase, "take the perquisites jointly," will be explained hereafter. How much shall be the fee, for whom, and at what sacrifice? To illustrate this, he himself instances one case: on preparing the sacrificial fire for those, who follow certain *śác'hás* of the *Veda*, a car should be given to the *Adhwaryu*, a fleet horse, to the *Brahmá*; and the carriage, in which the moon-plant was brought, to the *Udgáta*. therefore, lest the *perspicuity of the* rule be obscured, whatever fee is directed on whatever account, *that*, *and* no other, shall be paid So Cullu'cabhatta.

"Those, who follow certain *śac'has* of the *Véda*;" those, who study certain

certain *Yác'hás* of the *Véda*. "On preparing the sacrificial fire;" on preparing it for oblations to fire.

THE *Adhwaryu* and the rest are distinct officiating priests, whose duties are well known. The *Brahmá* and others shall not have a share of the car; nor the *Adhwaryu* and the rest, a share in *the value of* the *Brahmá's* horse. CULLU'CABHATTA mentions a *fleet* horse, to show the relative inferiority of these priests, in the order in which they are mentioned. If there be no specifick fee for each part of the rites, a partition shall be made as suggested by the text, "all the priests *shall* take the perquisites jointly." He states a case as an instance of partition: where four sets of priests officiate, the second set is entitled to half of what is receivable by the chief set, and so forth. The third set is entitled to a third of what is receivable by the first set, not to a third of the whole; for the first and second set having received three fourths, a third of the whole cannot be paid out of a quarter only. Therefore the text must be understood to mean a third of what is receivable by the first set; hence it amounts to something more than half a quarter *added to a quarter of this fraction*; and *more than three quarters added to half a* quarter of the whole sum have been distributed: a trifle remains, somewhat less than half a quarter; but the fourth set ought to receive a quarter of half the sum, or a quarter of the share receivable by the chief set; that is, half a quarter of the whole: yet there remains not so much. This difficulty is reconciled by CULLU'CABHATTA, CHANDE'SWARA, VA'CHESPATIMISRA and others. The word *arddha* in the masculine gender is employed in the sense of a part in general, whether more or less *than half*, as noticed by AMERA; from the context, it must of course signify something less than half; and it signifies a part *nearly* equal *to half*, for it is a rule, that equal parts are understood when the proportion is not specified; thus they reconcile the distribution. At the *jyótishtóma*, sixteen officiating priests are required by the law: there the *Hótá*, *Adhwaryu*, *Brahmá* and *Udgátá*, are the four chief persons, *or first set*, entitled to half the fee; and the fee, directed by holy writ, consists of a hundred cows: an equal part would amount to fifty; something less than that, or forty-eight cows, shall be received by the *Adhwaryu* and the rest. The next, namely the *Maitrávaruńi*, *Preshótá*, *Bráhmańáchch'hanśi*, and *Pratiprestóta*, who are entitled

to

to half of what is received by the first set, according to all readings of the text (which differ in form not in substance*), shall receive twenty-four cows, the difficulty being here reconciled by allotting something less *than a quarter*. The third set consisting of the *Achch'hávaca*, *Néshtá*, *Agníd'hra*, and *Pratiharta*, shares a third part of what is receivable by the first set, or sixteen cows; and eighty eight cows have been thus distributed: the fourth set consisting of the *Grávan*, *Unnéta*, *Potá*, and *Swabráhmanya*, shares a quarter of what was receivable by the chief set, or twelve cows: thus the hundred cows are distributed. The same form is to be understood in all cases.

Adhwaryu &c. are sixteen denominations of persons engaged for the several parts of the solemn rites of sacrifice and so forth, explained in the law concerning religious ceremonies. Disputes among them occur at the time of appointment, not at the time of distributing the fees, for the law has obviated disputes concerning the distribution. Each should be appointed to that part of the ceremony for which he is qualified, or he may be admitted, through favour, to an office for which he is less fit.

The distribution of cows at the *jyótishtóma* as mentioned by Cullu'cabhatta and others, is not merely grounded on the reason of the law, but the law itself ordains such a distribution.

XXXVI.

Srauta Ca'tya'yana.—Twelve to each of the first set, six to each of the second, four to each of the third, and three to each of the last.

This supposes four priests in each set. It must be noticed, that if priests be engaged for the first and second set, and the others be personated by grass,† the whole fee should be divided into three parts, of which two

* *Tad ardbha bhajah* entitled to half of that number, to half of that half, a phrase similar to that of "fifteened by a fifteen." Mitra reads *tad ardbhah* and notices another reading *dwitiyah* the last is not ever pertinent for the term may well signify entitled to one part in two. The first reading is approved by Chandes'wara and Cullúcabhatta. *(I have transferred these remarks from the text to a note for the sake of avoiding too long an interruption of the sentence.)* T.

† When a religious ceremony is performed by a single priest, he places on his right hand fifteen blades of grass to personate the superintending priest and all rites, which should be performed by four or by sixteen priests, the representatives of some of them are similarly made of grass, if the number of persons attending be insufficient

should,

ſhould be given to the chief ſet; and one, to the ſecond: for the law ſhows, that the ſecond ſet ſhould have half the quantity received by the firſt. So, if the firſt and third ſet only join in the work, the fee ſhould be divided into four parts; of which three ſhould be given to the firſt ſet; and one, to the third: or, if the concert be only between the firſt and fourth ſet, the fee ſhould be divided into five parts, of which four ſhould be given to the firſt; and one, to the fourth ſet: if the ſecond and third ſets only unite in performing the rites, the fee ſhould be divided into five parts, of which three ſhould be given to the ſecond ſet; and two to the third. If the ſecond and fourth ſets only officiate, the diſtribution is the ſame, which is made when the firſt and ſecond only act. If the third and fourth ſets only officiate in the joint work, the fee ſhould be divided into ſeven parts, of which four ſhould be given to the third ſet; and three, to the fourth: ſo, if the firſt, ſecond and third ſets act together, the fee ſhould be divided into eleven parts, of which ſix belong to the firſt ſet; three, to the ſecond; and two, to the third; if the firſt, third and fourth ſets only officiate together, the fee ſhould be divided into nineteen parts, of which twelve belong to the firſt ſet; four to the third; and three, to the ſecond: if the firſt, ſecond and fourth ſet only act together, twenty-eight ſhares ſhould be diſtributed; of which ſixteen, to the firſt ſet; eight, to the ſecond; and four, to the fourth: but, if the ſecond, third and fourth ſets only act together, thirteen ſhares ſhould be diſtributed; of which ſix ſhould be allotted to the ſecond ſet; four, to the third; and three, to the fourth. If one prieſt only be engaged for any one of the ſets, and the others of that ſet be perſonated by graſs, but a competent number of prieſts be engaged for the other ſets, then, whoever performs the work of a prieſt perſonated by graſs, ſhall receive his ſhare This rule muſt be admitted in regard to all the ſets; and the ſame method is applicable to other ſacrifices. In fact, at this time, and in this province, the employment of ſixteen officiating prieſts is little practiſed; but the employment of four, as directed in the *Gṛihya-ſangraha*, is frequent.

XXXVII.

The Gṛihya-ſangraha.—In gaming, in judicature, in holy faſts and ſolemn rites, a ſtranger ſees what eſcapes the obſervation of the principal: therefore

2. Let one be appointed to perform the work; let another hold the book; let a third expound queſtions; and thus let the buſineſs be conducted.

The firſt text declares the motive; in the ſecond verſe ſtrangers are diſtinguiſhed: "let one be engaged in the work," namely the ſpiritual teacher; and he officiates as *Brahmá*, or *ſuperintending prieſt* at the performance of ſacrifice as a part of a ſolemn act of devotion. If the principal himſelf do not perform the ſacrifice, the ſpiritual preceptor officiates as *Hótá*, *preſenting the oblations*, and if the man himſelf do not perform the principal rite, he officiates as his ſubſtitute. One perſon holds the book; and a by-ſtander expounds queſtions.

By "ſtrangers" are denoted perſons, who attend for any purpoſe at gaming and ſo forth: but in the performance of a ſacrifice, ſince a text ordains that perſons ſhould be engaged for every part of the buſineſs, their appointment by name to particular offices muſt be underſtood. Herein Raghunandana concurs; and the learned ſay, that a previous appointment, made with civility, muſt be underſtood. Conſequently, if it be ſuppoſed that it is ſolely meant to inſtance perſons engaged *for the performance of rites*, that is applicable to thoſe only, who are enumerated. Therefore, they are thus counted; firſt, the perſon engaged for the ceremony, namely the *Brahmá*, for he is appointed to check the utterance of words unſuitable to the rites, and to notice what is done, and what is omitted. If the man cannot perform the ſacrifice himſelf, then the *Hótá* is alſo a perſon engaged for the ceremony; for he is employed to recite texts and to offer the clarified butter. Both, being perſons engaged in the work, are comprehended in the ſame term. A ſubſtitute is of two ſorts, the *Hótá* and another perſon; we have therefore ſaid briefly, that both are comprehended in the ſame term, and that the employment of four officiating prieſts is proper. In fact, the *Brahmá* or *ſuperintending prieſt* ſhould be conſidered as a ſtranger engaged in the work; for the *Hótá* and ſubſtitute cannot give more attention than the principal. Thus the *Brahmá* notices what is done and what is omitted; a by-ſtander notes the form; and the reader views the book, for the *Hótá* cannot attend both to the book and the oblations: though

though as repreſentative of the perſon, for whom the ceremony is performed, he ſhould be conſidered as the principal *in the rites.*

Is not the reader alſo appointed for the rites? The term, "appointed for the rites," muſt be underſtood as intending a perſon different from the reader, in like manner as one name of kine may denote cattle of that ſort, and a ſynonymous term in the ſame ſentence may intend cows only. Or the *Brahmá* is uſeful *and neceſſary* to preſerve *due obedience to* the commands of the *Védas*, that the rites may have their effect, as a peſtle *is neceſſary* to pound rice and other grain: but the reader is only employed, on the reaſon of the law, to hold the book. If a prieſt is not found for the employment, the *Brahmá* may be perſonated by graſs; but, if the principal himſelf can remember the texts, the reader is not perſonated by graſs. Thus "appointed for the ceremony" ſignifies a perſon employed as requiſite to the effect of the rites.

"LET a third expound queſtions:" for example, when the *Hótá* attends not, it is aſked; "what is the conſequence when the *Hótá* does not attend?" Or, after the ſacrifice is begun, the reader ſays; "reſting your hands on the ground, name the Earth inaudibly." On hearing this direction, the *Hótá*, placing his hands on the ground, aſks, "in this manner?" The by-ſtander *replies;* "even ſo," or, "not ſo." Such anſwer is the buſineſs of the by-ſtander, explained by AMERA, "he, who ſhows the forms." Let the *Brahmá* ſuperintend the rites, noticing whether the *Hótá*, through forgetfulneſs, do any thing contrary to proper form. Thus are four officiating prieſts employed. When the work is finiſhed, gifts ſhall be received by them from the perſon for whom the ſacrifice is performed; and thoſe gifts are called ſacrificial fees *(dacſhiná)*, becauſe of ability *(dacſhatwa)* to produce effect.

BY whom ſhall the fee be received; by one perſon? or jointly by all? On this doubt it is directed, under the text of MENU (XXXVI), that the ſpecifick fee ſhall be received by him, for whom it is ordained; but, where no ſpecifick fee is ordained, it ſhall be ſhared among all the prieſts. With this the *Cb'handóga-pariſiſhta* diſagrees; for it excludes the reader and the by-ſtander, directing the fees to be divided between the ſuperintending prieſt and the perſon who preſents the oblations.

XXXVIII.

The *Ch'handóga-parisishta*:—THE reward, which has been ordained for him, shall be given to the *Brahmá*, or *superintending priest*, when the business is completed; and where no reward is declared, let a *vessel full of grain* or *púrna pátra* be given.

2. IF another perform the office of sacrificer he shall take half the sacrificial fee; but if the principal himself perform both offices, he shall give the fee to another person.

IT cannot be argued, that, *Brahmá* being explained by RAGHUNANDANA, in the *Durgótsava tatwa*, as bearing the general sense of a person who causes the rites to be performed, the reader is entitled to a share of the sacrificial fee; and, by parity of reasoning, the same follows in respect of the by-stander also. In the expression, "if the principal himself perform both offices," "both," referring to what has preceded, shows, that in the case of his performing both the office of *Brahmá* and *Hótá*, the fee should be given to another person: and that argument would be inconsistent with what is written in the *Sanskára tatwa*; "let him give the fee for the principal rite to the teacher, who superintends the rite; but if the *Hótá* be a different person from the sacrificer, no specifick fee being mentioned for their separate offices, the *Brahmá* and *Hótá* shall share the sacrificial fee."

SOME hold RAGHUNANDANA's meaning to be this; let all the priests share the perquisites, under the text of MENU (XXXV 1); but the text quoted (XXXVIII 1) is a general direction, which supposes a case where no reader is employed: for the difficulty is removed by interpreting "another person" (XXXVIII 2), another teacher by book: and this supposes a case, where the sacrifice is the principal rite; but if it be a secondary part of the rites only, the *Brahmá* and the rest not being employed in the principal ceremony, the fee for that ceremony shall be received by the reader, who is employed in it. Shall not the reader, being employed even in the sacrifice, receive a share of the sacrificial fee? And, if this be admitted, is it not inconsistent with the rule, that "the *Brahmá* and *Hótá* shall share the

the sacrificial fee?" *The answer is*, where the sacrifice is only a part of the ceremony, the reader not being excluded from the perquisites of the principal rite, the fee for that sacrifice, which is only a part of the ceremony, shall be received by the *Brahmá* and others employed in that alone: and here the reason of the law shows, that he only, who is appointed to perform a specifick work, shall receive the specifick fee ordained for that work. If he do not cause that specifick rite to be performed, still may it not be said, that there is no obstacle to his receipt of the perquisite, making it a rule, that he, who causes the principal work to be performed, causes the part to be performed, as it is a rule, that he, who performs the principal work, performs the part? *Thus question is thus answered*, let him receive a share of the sacrificial fee; but, in the principal rite, let the substitute and the *Hótá* receive a share of the gratuity allotted for that rite. The expression, "the *Brahmá* and *Hótá* shall share the fee," is intended generally. Under the direction for a specifick fee to the *Brahmá*, the sacrificial fee is shared by all the priests. To remove the inconsistency with the *Cb'handógaparisishta*, may not the text of, MENU be limited to the *jyótishtáma* and similar sacrifices? No; for MENU is declared pre-eminent by VRIHASPATI, (Book V, v. CCCXXXIII), and it is regular to explain the texts of other sages according to that law. How shall the partition be made in this case? Not in the form directed by the text above cited, "the four chief are entitled to half &c." (XXXV 3); for no mention is made, in this case, of chief, secondary, and subordinate priests. Let it not be objected, that such mention is made in the text last cited; "let one be engaged in the work &c." (XXXVII 2); for there is no difficulty in considering that text as merely intended for elucidation. To this it is answered, the numbers stated for the purpose of elucidation must be considered as satisfying that question: and there, the superintending priest and the person, who presents oblations, are first; for they are substitutes for the principal, and are together mentioned by RAGHUNANDANA, as first. Thus the reader is entitled to half, and the by-stander to a third, of what is receivable by the superintending priest, and by the *Hótá*. Consequently the superintending priest and the *Hótá* shall each receive three shares, and the reader a share and a half, of the whole fee divided into eight shares and a half; the two chief priests receive equal shares, but the by-stander receives one share only: how-

ever, ſhould there be ſeveral by-ſtanders engaged to attend the rites, the ſacrificer ſhould himſelf pay a gratuity to the others; for the text mentions one by-ſtander only; "let a third expound queſtions" (XXXVII 2).

OTHERS again hold that the words of MENU, "all the prieſts take the perquiſites jointly," relate to rites which muſt be performed by four prieſts; for that is ſuggeſted by the ſubſequent text concerning ſolemn rites, where the plural number is uſed (XXXV 3). But the text of the *Ch'hándóga-pariśiſhta* relates to ſolemn rites performed ſolely by the *Brahmá* or the like; and RAGHUNANDANA ſays, "it intends generally the perſon who cauſes the rites to be performed;" meaning rites different from ſacrifice; for, even in that caſe, the payment of fees being neceſſary, that is ſet forth in the expreſſion, "when the buſineſs is completed."

IT muſt be conſidered, that the words of MENU, "all the prieſts ſhare the perquiſites," ſhow a partition of perquiſites in all rites, ſince no diſtinction is mentioned: and, by the mention of the chief *or firſt ſet*, partition of the perquiſite is ſhown in ſolemn rites performed by ſixteen prieſts. The word *Brahmá* being employed in the text above cited (XXXVIII), he only receives his fee, when the ſacrifice is completed: and, by parity of reaſoning, the ſame rule will have force in other caſes. There is no authority for limiting the ſenſe of the word *Brahmá*: but, if it be taken abſolutely, why may not he, who cauſes the rites to be performed, receive a ſhare of the perquiſites? It is fit, that all the prieſts employed in the ſacrifice ſhould receive a ſhare of the perquiſites according to their employments.

SOME remark on the text, "Let him deliver the ſacrifick ſhed, and the furniture of it, to the officiating prieſt," that even the furniture of the ſhed muſt be divided. But there is no proof from any poſitive ordinance, or from ſettled uſage, that he, who cauſes gifts to be made, has a title in all the chattels given at a diſtribution of alms. It is the *current practice, for* the ſacrificer to give ſeparate gratuities to the ſuperintending prieſt, to the reader and the reſt. The ſenſe of the text quoted (XXXVIII 1) is this; whatever reward on whatever occaſion is *ſo* ordained by the law, (at ſome holy rites a cow, on another occaſion cloth, at other rites gold, and ſo forth;)

that time, and not perform the ceremony with another prieſt: but, if he be hurried, he may cauſe that ſacrifice to be finiſhed by another; and the abſent prieſt, who is forſaken, ſhall receive ſome triſle *as a token of reſpect.* Should the officiating prieſt wilfully abſent himſelf, though forbidden, while the ceremony is incomplete, he ſhall be fined a hundred *panas:* or if he be a grievous offender, the family-prieſt *ſhall be amerced.* To prieſts engaged to officiate at ſolemn rites, but afterwards found to be afflicted by diſeaſe, degraded, inſane, of ill fame, or diſabled by age, favour ſhould be ſhown; *but other prieſts ſhould be appointed in their ſtead.* If the officiating prieſt wilfully deſert the ſacrificer, who is not a degraded perſon, *nor otherwiſe diſqualified,* he ſhall incur an amercement of two hundred *panas:* and ſo ſhall the ſacrificer, who forſakes the officiating prieſt, though he be not degraded *nor otherwiſe incapable of acting.* But a man ſhould readily forſake an ignorant *or foolish* prieſt, though he be not degraded; and a prieſt may abandon a ſacrificer, who gives not *due rewards,* even though *otherwiſe* void of offence.

ſome recompenſe in proportion to the work." This appears from the literal ſenſe of the ſage's text, and from the explanation given by MIŚRA and others. What recompenſe ſhall he receive? a ſhare of the ſacrificial fee? or another gift from the ſacrificer? If he receive a ſhare of the ſacrificial fee *in proportion to the work*, then, ſhould the prieſt, after being engaged for the rites, abſent himſelf on the firſt day, he would have no ſhare of the ſacrificial fee. Under the expoſition of CHANDE'SWARA, (" the fee, payable to the perſon firſt called, ſhall be proportioned to the work, and be received by his heirs in the caſe of his death;") it is ſaid, that a fee, proportioned to the work, ſhall be received by the perſon firſt called, or by his heir. Why is it declared, that, " the ſacrificial fee belongs to the prieſt firſt engaged?" ſhould it not rather be declared, as in the text of NA'REDA (XXVIII), that " he ſhall receive a ſhare of the gratuity?" This text has the ſame import with the words of NA'REDA: the former text of SANC'HA and LIC'HITA (XXX), directing the appointment of another prieſt, intimates a partition of the ſacrificial fee; by mentioning, in the preſent text, that the gratuity belongs to the prieſt firſt appointed, it is denoted, that, if the firſt prieſt return after another prieſt has been engaged, the firſt prieſt ſhall perform the work: on this conſideration, it is directed, that the other prieſt ſhall receive ſomething. If the former text (XXX) relate to the death of the prieſt, how can this part of the preſent text (XLI) apply to the caſe of abſence; and why has CHANDE'SWARA explained it " if he die &c.?" " Die," in the former text (XXX), may be taken in an indefinite ſenſe. Then, the text of NA'REDA coinciding with that of SANC'HA and *LIC'HITA*, the word explained " diſabled" would ſignify dead? Some *rule is* neceſſary for the caſe of a prieſt unable *to act*; the text of NA'REDA cannot apply to a caſe of death; for he ſays, " receive from him (from the firſt prieſt) the ſtipulated ſhare."

THIS firſt rule being applicable to the caſe of abſence without notice, the ſage delivers a ſecond rule: " If he abſent himſelf, after notifying the time, (a month, a fortnight, or the like) or the cauſe of his abſence, let the ſacrificer wait his return, and not perform the ceremony with another prieſt:" ſo the *Retnácara*. A prieſt, engaged for a ſacrifice which may be performed *on* many *different* days, or for the reading of *Puránas*, or the like, being buſied

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It has been already ſaid, that, if the officiating prieſt be diſabled, his work ſhould be finiſhed by another perſon; the ſage now declares the rule, when a prieſt engaged to officiate does not attend: "let the ſacrificer afterwards engage another prieſt." If he be accidentally delayed in coming from his houſe; or if the ſacrificer ſhould hear, that the prieſt has gone to another town without giving notice that a delay in his attendance may be expected, then another prieſt may be appointed. But Chande'swara explains the text, "If one of ſeveral prieſts appointed to officiate at ſolemn rites ſhould die or be diſabled, and the ſacrificer engage another prieſt." This *(abſence)* muſt alſo be underſtood from the terms of the gloſs "die, or be diſabled." Misra ſays; "if one of the officiating prieſts die, let the "ſacrificer engage another prieſt:" and the meaning is, "if the prieſt firſt appointed go to another town or die, the fee belongs to him, though another prieſt be engaged; and the other prieſt, conſidered as a ſtranger, ſhall receive

ſome

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on work which allows not leisure, fixes a day, two days, a fortnight, or a month; and promising to attend after finishing the work, departs on that business: the sacrificer, having consented *to wait*, must not engage another priest, but must defer his business for the time *limited*. But MISRA thus expounds the text: "if any officiating priest be absent on account of business, let the sacrificer allow sufficient time *for his return*." According to his gloss and reading, the sacrificer, estimating the time and occasion *of his absence*, should so long await *his return*. The meaning is, that, estimating the time required for the completion of that business, which occasions his absence, the sacrificer should wait a little longer. On this opinion, absence, with the consent of the sacrificer, is not implied; and this part of the text has the same sense with the preceding part: but there the fee is noticed; and here it is directed, that another priest shall not be appointed. The result is, that, in case of consent, it is necessary to wait a sufficient time, as is universally acknowledged; and, even without having previously consented, the sacrificer should, if possible, wait the priest's return. According to MISRA, this is ordained by the law; and, according to the *Retnâcara*, it is *only* grounded on the reason of the law: but it is proper.

IF a priest, after being engaged for a sacrifice, which allows not leisure, but should be performed on the day of full or new moon, or the like, absent himself on some urgent occasion, with, or without the assent of the sacrificer, what is to be done; for the sacrificer cannot wait, since the rites are only proper on a certain lunar day? To this question it is answered, "if he be hurried &c." (XLI). "And the absent priest shall receive some trifle;" he shall receive something as a token of respect; since, not having performed any part of the work, he is not entitled to a share of the sacrificial fee. Or something shall be given to preserve due respect, merely on account of his engagement, when the priest, prevented by business from attending *at the proper time*, afterwards does attend: this also should be understood from parity of reasoning. CHANDÉSWARA thus explains the text: "let a man, who understands the order of proceeding, cause the sacrifice to be finished by another priest; and let the priest first engaged, who went to a distant place, and has been *therefore* forsaken, receive something, from the sacrificer, as a gratification:"

tion:" that is, if the sacrificer could not wait his return. But MISRA says; if the priest be supposed to have died &c. let the sacrificer cause the ceremony to be finished by another priest; and the sacrificial fee belongs to him: but, if the priest happen to return, let the sacrificer give him some trifle. If the priest went, with the assent of the sacrificer, for five days, and afterwards another priest, knowing that rites are to be celebrated at the expiration of ten days, happen to attend, the sacrificer may cause the work to be finished by that other priest: but, after his own assent, he should not, without a sufficient cause, engage another priest, at the instigation of *other* people, or from a motive of anger or the like.

A THIRD rule is mentioned: "if the priest wilfully absent himself, though forbidden by the sacrificer, he shall be fined a hundred *panas*:" so MISRA and CHANDE'SWARA. From the insertion of two words, "wilfully" and "forbidden," it is inferred, that, if he be absent on account of urgent business, even though forbidden, he shall not be amerced: nor shall he be fined, *if he absent himself, even without business, but not forbidden by the sacrificer*. However, "not forbidden" may be understood as included in forbidden: thus, if he absent himself without giving notice to the sacrificer, and without business requiring his absence, even then he may be amerced. This is consistent with the reason of the law; for, as not forbidding is assenting, so it may be said, that not assenting is forbidding. It follows from the context, that another priest may be engaged; and the sacrificial fee shall be received by him, who performs the work: and it is not proper that a gratification should be given. If the officiating priest, though forbidden, absent himself, after performing some work, shall he, or shall he not, receive the fee for that work? It is answered, the payment of a fine is declared, not the forfeiture of the wages of his labour: therefore he shall receive the fee for the work performed. If he only absent himself after his engagement, does he not receive a gratification from the sacrificer? There is no need of a gratification, since he is faulty. The appointment of priests is an essential part of the rites; but it is the act of the sacrificer: the acceptance of the appointment is no part of the rites. Let it not be objected, that the appointment may perhaps be unaccepted; and, if it be not accepted, the rites produce no benefit to the sacrificer; and thence it follows, that the

the acceptance of the appointment is a part of the rites. If they be completed, it is uſeleſs to admit it as a primary or ſecondary part: another prieſt is appointed; and his acceptance muſt be *ſuppoſed*. Abſence does not here intend going to another province or another town only; but alſo, going to his own houſe, and neglecting the performance of the rites: and, if a prieſt, engaged in one place, and having undertaken the buſineſs, undertake other work in another place, leaving that buſineſs unfiniſhed, it muſt be underſtood to be an offence, according to the circumſtances of the caſe.

" Or if he be a grievous offender &c." if the officiating prieſt be a grievous offender &c. " Or" denotes another caſe. By this part of the text is denoted a man, who, was already a grievous offender; in the former part is intended an offender on that particular occaſion. Chande'swara ſays, that one, who was already a grievous offender, is here intended: and this ſhould be underſtood as admitted by Misra. Thus, if that officiating prieſt, having received an appointment for ſolemn rites, wilfully abſent himſelf, the ſacrificer's family-prieſt, who ſelected perſons to officiate, ſhall be amerced. It is the regular buſineſs of the family-prieſt to ſelect officiating prieſts: or, in his default, a learned friend ſelects them. This meaning is deduced from the word family uſed in this place, and from ſuch practice ſeen in hundreds of inſtances. But Va'chespati ſays, " the ſpiritual preceptor, who inveſted him with the mark of his claſs, ſhall be amerced:" and the author of the *Retnácara* explains the word family in another ſenſe; " the prieſt, whoſe buſineſs it is to examine the families of the officiating prieſts, ſhall be amerced." No *eſſential* difference reſults from this expoſition; the only difference is, that it has been noticed in the *Retnácara*, that the officiating prieſt ſhould be ſelected by the family-prieſt.

Others thus interpret the text; " the family-prieſt, officiating at rites, ſhall be fined a hundred *panas*, if he offend." Conſequently the ſenſe is, that, if the family-prieſt, though forbidden by the ſacrificer, wilfully abſent himſelf, while the ſacrifice is unfiniſhed, he ſhall be fined a hundred *panas*. This was *alſo* directed by the preceding part of the text, but is repeated to ſhow a fine, if he abſent himſelf, even though he have not been engaged *for a particular*

ticular ceremony. This conſtruction will be noticed in explaining a text, which will be quoted from NA'REDA (XLIII): but the former conſtruction is proper, becauſe it is delivered by authors, and is conſiſtent with the reaſon of the law: therefore, ſhould he appoint a grievous offender, he partakes of the offence. It ſhould not be objected, that, if the offence were not previouſly known to the family-prieſt, how can there be a fault on his part? He is faulty, becauſe he did not make particular inquiries: and, if prieſts, learned in law, be ſelected by the ſacrificer without knowing their defects, even then the family-prieſt ſhould make inquiries concerning faults, which may obſtruct the rites. But, if the ſacrificer exclude him from that office, he is not in fault.

THE word *(upádhyáya)* is explained by MISRA the appointed ſpiritual preceptor; AMERA explains it 'a teacher;' he, from whom a diſciple, reſorting to him *(upétya)*, learns *(adhíté)* a ſcience, is a preceptor *(upádhyáya)*; we apply it to any family-prieſt *(puróhita)*. The grounds of this explanation are the mention of the word family; no perſon is teacher to a whole race or family; nor is it ordained or cuſtomary, that the teacher ſhould ſelect the officiating prieſts: but the word *upádhyáya*, in hundreds of inſtances, ſignifies *puróhita*.

"AFFLICTED by a diſeaſe," which obſtructs the rites, or prevents their effect. "Of ill fame;" abandoned on account of ſome offence charged againſt him, and the like. "Old;" and therefore unable to act. So CHANDE'SWARA. Therefore, if a prieſt be engaged, without any knowledge of his malady or other diſability, and it be afterwards diſcovered, let the ſacrificer "favour him," and, with his aſſent, appoint another prieſt. The ſenſe is the ſame on the reading of CHANDE'SWARA; "favour ſhould be ſhown."

THE text declares an offence in wilfully deſerting a ſacrificer; but there is no offence in quitting him for urgent buſineſs: and, if the ſacrificer forſake a prieſt not diſeaſed, nor otherwiſe diſabled, nor abſent, he ſhall be fined two hundred *panas*. "Degraded" &c. comprehends generally diſeaſed or otherwiſe diſabled. It is proper to forſake perſons,

who maliciously seek to injure the solemnity; or who, always finding fault, endeavour to spread ill reports; and other persons of similar descriptions.

"IGNORANT;" much averse from the study of the *Védas*, and unacquainted with the law concerning the rites at which he is to officiate, and with the rules concerning his part of those rites, and the like. If any covetous *Bráhmana* officiate at sacrifices for men of low and mixed classes, for whom *Bráhmanas* do not usually officiate, the sacrificer, having admitted him, shall not *afterwards* reject him, however ignorant he may be. Or if any learned priest, tainted with a sin committed in a former existence, consent to officiate at a sacrifice for such a person, he should be forsaken *by others*, under the authority of the text, as a foolish man; but since his foolish transgression of duty was on that man's account, he shall not be forsaken by him: but if the foolish man had *already* violated his duty on another occasion, there is no offence in forsaking him. This and other points may be inferred from reasoning.

A PRIEST may abandon a man who gives not "due rewards" at the time of a solemnity undertaken in the previous expectation of reward. In the former part of the text it is said, that an ignorant priest may be forsaken: it must be understood, that a more learned priest attends; a man should not abandon an ignorant or foolish priest, and engage one more ignorant or foolish. In fact all this supposes knavery *or wickedness*: it is not proper to abandon an ignorant priest, without any misconduct on his part, and without the attendance of a learned priest: knavery must be understood as the ground of punishment.

THE amercement of two hundred *panas* directed for the sacrificer, who forsakes the officiating priest, and for the officiating priest, who forsakes the sacrificer, is inconsistent with a text quoted from MENU in the *Vivádа Retnácara* and *Vivádа Chintámeni*.

XLII.

MENU:—THE sacrificer, who forsakes the officiating priest, and

and the officiating prieſt, who abandons the ſacrificer, each being able to do his work, and guilty of no grievous offence, muſt each be fined a hundred *panas*.

MISRA and CHANDE'SWARA reconcile the texts by ſaying, that "there is no inconſiſtency, *ſince the fines are regulated* according to the voluntary or compulſory *deſertion* by a rich or a poor man." Conſequently a rich man, if the act be voluntary, muſt be fined two hundred *panas*; but a poor man, even though the act be ſpontaneous, ſhall be fined one hundred *panas* only, becauſe he is unable *to pay a greater fine*. By "poor" is meant 'unable to pay two hundred *panas*.' If he cannot pay a hundred *panas*, what is the conſequence? He may be acquitted by the ſurrender of all his property. Why has MENU mentioned a fine of a hundred *panas*? Conſtructively a greater ſin being expiable by the ſurrender of the whole of a man's property, it is unſuitable to ſay that a ſmaller offence is not expiated. Here no favour is ſhown to the ſacerdotal claſs; for it is a *Bráhmana* that deſerts the ſacrificer; and it muſt be ſo ſettled from the very relation implied in the deſertion of a ſacrificer.

Panas, though not ſpecified in the text, are underſtood, from the neceſſity of ſatisfying the queſtion, *of what ſhall the fine conſiſt?* Where the number is mentioned inſtead of the ſpecies, *panas* are commonly underſtood; for many inſtances of this occur; and that deſignation, being mentioned in the texts of other ſages, is deduced from the coincidence of the rules. In this inſtance, the fine, directed by SANC'HA and LIC'HITA, is explained two hundred *panas*, and the inconſiſtency of this text is removed by ſaying, that the two hundred *panas* abovementioned muſt be underſtood of wilful deſertion by a wealthy man: but SANC'HA and LIC'HITA *alſo* direct, that an officiating prieſt, deſerting a ſacrificer, ſhall be fined two hundred *panas*. They direct, that an officiating prieſt abſenting himſelf, though forbidden by the ſacrificer, but without *abſolutely* forſaking him, ſhall be fined a hundred *panas*. But it is conſiſtent with the reaſon of the law, that the amercement ſhould be fifty *panas* only, if he be poor, and his abſence be involuntary. This, however, is not ſpecified by any ſage, nor clearly expreſſed by any author.

NA'REDA:—OFFICIATING prieſts are of three ſorts; *the firſt, an hereditary prieſt* honoured by former generations *with the employment of officiating prieſt*; *the ſecond*, appointed by the party himſelf; *the third*, he, who voluntarily officiates on account of previous friendſhip.

2. THE officiating prieſt, who abandons a ſacrificer, though he be not a grievous offender, nor otherwiſe faulty, and the ſacrificer, who forſakes an officiating prieſt guilty of no grievous offence, ſhall each be fined.

3. THIS is the law for hereditary prieſts, and for thoſe, who are engaged by the party himſelf: but there is no offence in forſaking a prieſt, who *unbidden* officiates of his own accord.

"HONOURED by former men;" honoured as officiating prieſt by former generations; an hereditary prieſt.

The *Vivâda Retnácara*.

"THE ſecond, appointed by the party himſelf;" one, who is appointed on the occaſion of a ſacrifice or ſolemn rite, to perform that *particular* ceremony. "He, who voluntarily officiates &c;" YAJNYADATTA, influenced by friendſhip or the like, and for the benefit of DEVADATTA, pays adoration to his houſehold gods; or, at a time when he is impure, performs a ſacrifice, which ſhould be performed by him; or effects the ſacrament of the ſon of an abſent friend, even without his aſſent, to remove the evil, which might ariſe from its not being effected: it is to be underſtood of this and other caſes. "*Nor otherwiſe faulty;*" this may apply to both: by fault are intended blows, enmity, diſhonour, and other faults already mentioned.

Who is an hereditary prieſt? It ſhould not be ſaid, he, whom the grandfather employed, and afterwards the father, and next the man himſelf. If the

the grandfather, being rich, employed ten millions of *Brahmat as*, and the grandson, being poor, cannot employ so many priests, he would incur a fine. Some hold, that "hereditary officiating priest" supposes a specifick appointment in this form, "so long as my descendants and yours exist, shall you and your descendants sacrifice for me and my posterity" It is the custom, that he, whom the father called to all solemn rites, should officiate also for the son and the agreement abovementioned is not supposed. In fact the appointment is made by saying, "be my priest *(purôhita)*," which implies a distinction opposed to an appointment in this form, "now accomplish my sacrifice." and here the word "*purohita*" signifies a priest employed for a long space of time. We do not determine, whether the word "I" intend *the speaker* himself only, or his race generally If it ntend his race generally, there is no dispute, because, when the father has agreed that DE'VADATTA shall sacrifice for his son, the son, forsaking him without a fault on his part, is liable to a fine and *this* construction is consistent with the reason of the law. If the word "I" be restricted to the speaker himself, how should the son incur a fine by forsaking the priest? Here proof must be brought from practice A dispute arising on the subject of desertion by an officiating priest or by a sacrificer, the first says, "I have been priest *(purohita) to the family* for three generations," *he does* not *say* "an agreement was made by his grandfather, for the performance of sacrifice *by me and my heirs*, as long as his race should exist."

Is not such an agreement inferred from the performance of sacrifice for three generations without interruption, and does he not, for that very reason, plead the performance of sacrifice for three generations? No, such an inference cannot hold, since it is not the present practice for any person to make an agreement in that form On this subject it is said, the usage is ascertained, as implied by this text, thus, by saying, "be my priest (or *purohita)*," he is fully appointed to be priest *of the family* for a long space of time, and, whatever be implied, the priest, so appointed by the father, shall not be forsaken by the son, unless he be guilty of some offence. This, virtually, is the sense *of the text*.

A PRIEST, appointed by a man himself, is of two sorts, appointed for a long space of time, or appointed for a particular ceremony. The rule va-

ries in respect of these: it is an offence, under any circumstances, to forsake a priest appointed for a long space of time, unless he commit some fault; and it is an offence to forsake a priest appointed for a particular sacrifice, in the midst of that sacrifice.

In the gloss on the text of SANC'HA and LIC'HITA prefaced by the words, "others thus interpret the text,"* it is intimated, that if the family-priest, or a priest appointed to that office by the sacrificer himself, should absent himself, knowing that a sacrifice is to be performed, though not engaged for it in the form directed by the law, he shall be fined; provided no person attends as his representative. From parity of reasoning, the sacrificer should be fined, if he refuse to employ his family-priest above described.

If sacrifice have been uninterruptedly performed by father and son, as family-priest, without an express appointment in this form; "be my family-priest," what is the consequence? Even in this case, the law concerning hereditary priests is apposite, since such an appointment of father and son is admitted by implication.

If hereditary priesthood be liberally admitted in favour of a priest engaged by the father for a long space of time, may it not be admitted in favour of the son of a priest so engaged by the father; thus, a dispute arising on the subject of desertion between the grandsons of the sacrificer and of the officiating priest, the grandson of the priest may offer this plea, "his grandfather employed my grandfather in sacrifices, and the office has been uninterruptedly held by us from that period?" It may be so: for he will better gain his cause by *proof of the performance of* sacrifice for several generations, than by the same *proof* for one generation only.

Such being the case, where the officiating priest has three sons, and the sacrificers, *or employers*, are three, a partition may take place; for, on this admission, the sacrificers, *or employers*, are similar to property. But if any one sacrificer refuse one of the priest's sons, what is the consequence? It should not be argued, that, partition arising from the right of the priest's

* See p. 168.

descendants

descendants to *officiate for* the sacrificers *or employers*, under the authority of law and custom, the sacrificers shall be fined if they refuse their assent to the partition and, in this *last* case, all shall be fined, since all are equally in fault No one has mentioned a fine for parties refusing their assent to a partition. Nor should it be argued, that, since forsaking the son of a family-priest amounts to the forsaking of an hereditary family priest, the abandoning of the family-priest is a cause of amercement No sage or author has said so. To the question thus proposed, the answer is, they must be understood to be indivisible under the text of VYASA (Book V, v. CCCLXIV), and the rational distribution, mentioned by BRIHASPATI (Book V, v CCCLXVI 6), supposes the consent of the sacrificers. Thus, if the sacrificers say nothing, they shall not be forcibly taken by one person. In fact, a distribution of sacrificers *or employers*, though not mentioned by authors, may be adjusted by the king on his own judgment but a distribution by lots should be preferred.

In certain towns or other places, and for particular rites, the office of priest is hereditary in some families, and partition is there customary, and should be admitted in such instances. *It is the hereditary office of some persons to* deliver written instructions on the forms of penance and the like, in these instances also, partition should be allowed.

Agrabarica * priests and others, paying revenue to the king, hereditarily receive *tila* and the like, their right should be admitted on the same construction of law with *the right of* family-priests, or on the king's pleasure As the king has property in the village, entitling him to receive revenue, so the *Agrabarica* and others have property entitling them to receive *tila* and the like May not the king, having property, dispose of it at his pleasure, but can the *Agrabarica* do so? The king has not power to destroy the village *by oppression*, and his gifts and alienations are not inconteſtable It is the same in respect of the *Agrabarica* The king may *indeed* take the property of the subject because he is lord of the land however, as the king, though he have property in the soil, cannot take its *whole* produce, but has a title in a waif, though it belong to a subject, so he may take the property of subjects, though the *Agrabarica* and others have *also* a title in it

* Priests who attend at funerals In some districts they are called *Mahabrahmans* in others *Mahapatras*, *Agradas*, *Pretajas*, *Cantaca*, &c

If *tila* and the like be taken by the *Agrahárica* and others in right of a property in the village, the giver would have no benefit from the gift, any more than from the payment of the king's revenue. This is denied; property does not arise in the *tila* from the payment of the king's revenue, but a title to receive the *tila*. Property, authorizing alienation at pleasure, originates in actual receipt founded on the title to receive from such peasants, and in actual delivery by the donors. Consequently, there is no difficulty.

It is doubted whether wives and others have a title to this succession, although the partition, founded on the admission of a right vesting in *Agrahárica*s and other officiating priests, ought to be similar to the partition of inheritance *in general*. As the wife's title to succession, on failure of heirs in the male line as far as the great grandson, will be declared under the head of inheritance, what should reverse her title *in this instance?* It should not be argued, that the wife can have no right in the village, because, as a woman, she is disqualified for the performance of holy rites, and because the wives of *Agrahárica*s and others are totally incapable of receiving *tila* delivered as a gift to priests. The *tila* may be received, and the rites be performed, through the intervention of a substitute. Let it not be argued, that, were it so, a property in the sacrificial fee and *regular* dues would vest in the substitute. The wife may have the benefit of property acquired by the substitute, as a sacrificer has the benefit of rites performed by an officiating priest. However, there is this difference: the sacrificer acquires merit from rites performed by an officiating priest, and none is ever acquired by the intermediate performer of the rites; but, if the duty of the officiating priest be performed by a substitute, property in the sacrificial fee is at first vested in the substitute, and, through him, in the widow entitled thereto. It is alleged, that there is no authority for this construction. It cannot, *it is said*, be argued, that the authority, which forbids desertion, proves a property in the village, since otherwise it must be irrelevant; hence property in the sacrificial fees and the like vests in the wife as owner, and afterwards is acknowledged to vest in the substituted priest, because otherwise the sacrificer's rites could not be complete: the law, *it is said*, does not declare it an offence to forsake the wife *of an officiating priest*; for she is an ignorant person. That is denied, because, the descendants of an officiating priest having the same

right

right *to the office* which they have to inheritance *in general* (on the admiſſion of property in that office), the forſaking of an ignorant perſon is limited to the actual performance of the rites. It is no where ſeen, that, a wife and a daughter's ſon being left by an officiating prieſt, the wife ſhall be entitled to the remainder of the eſtate, and the daughter's ſon be entitled to the *perquiſites of the* office.

If this argument be propoſed, the anſwer is, the ſame text, which declared that hereditary prieſts ſhould not be forſaken, excepts ignorant perſons: and that authority avails not, in this caſe, to confer property on one who is not a learned prieſt. As for what is alleged, that the wife is entitled to the wealth, and that there is no ſettled uſage entitling the daughter's ſon to take the office; the parity between the wealth and the office may ariſe from favour ſhown by the daughter's ſon and by the ſacrificers, or from miſtake: uſage alone is no authority, unleſs it be confirmed by conſtruction of *expreſs* ordinances.

On this point it is argued, that, as the rites cannot be performed by an ignorant or diſabled perſon, the law directs that he ſhall be forſaken, intending that the rites ſhould be performed by means of a ſubſtitute; but the ignorant perſon has property in the ſacrificial fees and the like, as the owner *of a ſlave has property* in the wealth acquired by the ſlave: and this conſtruction ſhould be ſettled on the ſtrength of the admiſſion of a property *veſting in the heir*. The text, which ordains that "a perſon unable to act ſhall appoint another to act for him," is the foundation *of this conſtruction*: but the property of an outcaſt, or other perſon diſqualified for ſolemn rites, is abſolutely loſt, in the ſame manner with his right to the paternal gold, ſilver and the like. This will be explained in the fifth book on inheritance. Wives, and others, diſqualified by ſex for the performance of holy rites, cannot appoint a ſubſtitute; as a defiled perſon cannot perform a ſolemn act ordained by the *Védas*: therefore wives have no property in the office of prieſt.

If the daughter of an officiating prieſt have a ſon, has that ſon a property in the office? If the daughter's ſon have ſuch a right, then, ſhould a daughter, likely to bear a ſon, and a ſon of the maternal great grandfa-

ther's daughter, be left, he would be entitled to the office: but that is not supported by usage nor by common sense; and there would be no certainty in regard to what should follow, if a daughter's son be afterwards born. If it be said, the daughter's son has not such a property; then the reason of the law is transgressed, for there is nothing to prevent the property of the daughter's son in his maternal grandfather's wealth, if it be not resisted by a right vested in some other heir, *the male descendant, the wife, or* the daughter of the *last* possessor; and this office is absolutely similar to wealth.

THE text, which forbids the dismission of an hereditary priest, does not imply, that his heirs shall not be dismissed, but implies, that a person appointed by the grandfather or other ancestor shall not be forsaken: thus no difficulty affects the terms *of the text*. That is denied; for the practice is not such.

THEREFORE the difficulty is thus reconciled; women are entitled to that only, for which they are qualified. In regard to the assertion, that women, being disqualified, cannot appoint a substitute, this must be understood; being disqualified for solemn acts ordained by the *Vēdas*, they cannot appoint a substitute for such acts; but, qualified for worldly acts, nothing prevents their appointment of a substitute for temporal *affairs:* and the right should devolve on the next in succession, under the text *quoted in another place* (Book V, v. CCCCLXXVII), and because women are dependent on men. Grain and similar property may be consumed by a woman entitled *to the succession;* but gold, silver, and the like, should be preserved: if she cannot *guard it*, let it be intrusted to her husband's heir, as will be mentioned under the title of inheritance. Here, since a woman cannot preserve the office, it should be executed by her husband's daughter's son or other heir: but the produce should be enjoyed by the woman. However, should the daughter's son be at variance with his maternal grandmother, it may be executed by another person: he is not entitled to his maternal grandfather's property, *if* that grandfather leave a wife: and should the maternal grandmother litigate, it must be amicably adjusted.

THE usage in regard to *Agrahārikas* and others has been briefly discussed. No more express ordinance is found to determine, consistently with usage,

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the fuits which arife on thefe fubjects. If ordinances alone be received, there is no authority for eſtabliſhing the right of their heirs: and many excellent perſons do not admit the rules of inheritance in theſe caſes.

" THERE is no offence in forſaking an *unbidden* prieſt' who officiates of his own accord (XLIII 3)." The word is interpreted *officiating* prieſt in the *Vivâda Retnâcara* and *Vivâda Chintâmeni*. If any *Bráhmana*, of his own accord, attempt the performance of holy rites for any perſon, and that perſon, when informed of it, forbid him, the ſacrificer ſhall not be amerced *for ſubſequent deſertion*. But it muſt be conſidered, that, if the ſacrificer, though informed of it, have not *at firſt* forbidden him, but afterwards, when ſome part of the rites has been performed, do forbid him, he ſhall be amerced; for not to forbid is to aſſent: under this rule, *his ſilence* amounting to full aſſent, the prieſt is abſolutely appointed by himſelf, and it would be improper to diſmiſs him from that ceremony. Though it be not mentioned by authors, this is conſiſtent with common ſenſe.

LXIV.

VRĬHASPATI: — THEY are declared to be of three ſorts; coming of their own accord, hereditarily employed, and appointed by *the facrificer* himſelf *for that turn*: even ſo ſhould the buſineſs be performed by them.

" THEY;" meaning officiating prieſts. " Coming;" voluntarily *officiating*. " Hereditarily employed;" appointed by former perſons. " Even ſo ſhould the buſineſs be performed;" that is, the rites ſhould be performed as above mentioned. Such is the ſenſe *of the text*. But ſome conſider this text as intending concerns among partners in general; thus, the ſenſe would be, partners are of three ſorts; accidentally entering into partnerſhip, hereditarily engaged, (as a ſon after the death of a father, who was engaged in partnerſhip,) and engaged by *the party* himſelf (that is, called in by him at the commencement of the undertaking). " Even ſo" &c. that is, the buſineſs ſhould be adjuſted in proportion to the ſhares, whether equal, leſs, or greater.

HERE it ſhould be conſidered, that, if five teachers be engaged to read holy books, and one expound the verſes, and all the reſt be reciting readers,

ers, gratuities are feparately paid to each of them; and fomething is giv by ſtrangers, who hear the recital, to the expounder of verſes and the re either for the benefit of hearing, or from the ſatisfaction, which their ſk in recital affords: and, according to ancient and excellent uſage, ſtrang as well as the employer give ſomething reſpectively for particular ſtorie ſuch as the ſtory of LACSHMANA's eating *after his long faſt*, in the reci of the *Rámáyana;* and the ſtory of the dwarf's begging alms, in the *Bhágavata;* and the marriage of DRAUPADÍ in the *Mahábhárata.* ſuch caſes, what is received both by the readers and the expounder ſho be *diſtributed* in ſhares: but what is given on account of peculiar excellence, or ſkill in recital, belongs to him to whom it is given. The ſha ſhould be diſtributed according to the number of readers; and the expo der ſhall have a half, a quarter, or ſome other ſhare. At preſent ſuc cuſtom ſubſiſts in ſome countries: though not declared by the law, it ſho be admitted on the ſtrength of cuſtom.

IN this caſe, ſhould the expounder obtain any thing by the errour of i troducing a more excellent *ſtory* on a leſs excellent occaſion, (as LACS MANA eating *after his long faſt*, in *the recital of* the ſtory of the *Mahábhárat* what is the rule? The anſwer is, if the readers aſſiſted in the miſtake, t diſtribution ſhould be made as in the preceding caſes; but, if they did aſſiſt in it, the whole belongs to the expounder; or, if ſome of the read did aſſiſt, they are entitled to ſhares of the reward; and the ſha ſhould be diſtributed according to the number of perſons concerned.

FROM the mention of former perſons *or generations, it muſt be underſto that* the family-prieſt of the paternal grandfather, being ſuperiour *to others*, the prieſt of the maternal grandfather, ſhould never be forſaken; but, ſho there be no paternal family-prieſt, or no paternal wealth, and the man ſu ceed to *his* maternal grandfather; then it is proper, that he ſhould empl his family-prieſt. This, however, is merely an induction of comm ſenſe, not the import of the ordinance.

THE known cuſtoms at holy places, ſuch as *Gayá* and the like, and other countries, ſhould be maintained in judicial procedure.

SECTIO

SECTION III.

ON PARTNERSHIP IN LOANS, IN HUSBANDRY, IN ARTS, AND IN PLUNDER.

XLV.

VRĬHASPATI:—THE profits of thoſe, who *jointly* lend gold, grain, liquids, or the like, ſhall be proportioned to their reſpective ſhares *of the outlay*, whether equal, or more, or leſs: thus is the law ſettled.

2. WHATEVER property a man lends, with the aſſent of many, or whatever buſineſs he *ſo* cauſes to be performed, is conſidered as the act of all the partners.

ADVANCE, or "lend," is explained in the *Retnácara*, make a written contract with a view to gain. A joint loan on intereſt is intended: the profits ſhall be proportioned to the ſhares in the principal loan; and the ſame muſt be underſtood of loſs: this is the ſettled rule and practice. What is lent to any perſon, with the aſſent of all the partners, is lent by all: and a contract, which one partner makes with the aſſent of all, or his acceptance of a written contract of debt from a debtor, is conſidered as the act of all. Conſequently they all ſhare the gain or loſs on that loan; and the borrower, by that written contract, becomes debtor to all the partners; therefore, ſhould any one of them adopt compulſory means for the recovery of the debt, he ſhall not be puniſhed.

XLVI.

AMONG perſons bound jointly and ſeverally, whoever is found, may be compelled to pay the debt.*

* Book I, *v.* CLXXIV.

As a debt must, under this text, be paid by any one survivor, among several debtors jointly bound for the same debt; so any one survivor, among several creditors jointly advancing a loan, may, consistently with the reason of the law, recover the whole debt: but the heir, or the king, not the partner, *ultimately* receives the property of the deceased; for the case is parallel to that of partnership in trade. How then may one survivor recover the whole property? If he recover not the whole, the heir of the deceased, or the king, might take the share belonging to the deceased, out of the proportion which the survivor recovered as his own share: therefore, he should endeavour to compel payment of the whole debt. But, if the debtor declare; "this I pay thee for thy portion; the shares of the rest shall be paid hereafter;" the portion of the debt, received by the survivor, cannot be taken from him by any other person. It should not be argued, that, the recovery of a debt due to joint lenders being requisite, like the payment of a debt due from persons jointly bound for it, he shall be amerced if he neglect to recover it; but it is necessary, that the heirs of the deceased should assist in the recovery of the debt. If the heirs assisted in the recovery, the debtor could not say; "I now pay thy share:" however, a penalty for not demanding the debt will be mentioned. It should not be argued, that, if the heirs of the deceased reside in another province, then, not being present, they cannot make the demand; the debt should therefore be recovered by the survivor; and, if he accept his own share alone, he shall be amerced. The case being parallel to that of partnership in trade, it is necessary, that the king should assist in the recovery of the debt: and here the demand *of payment* is similar to the custody of stock in the case of partnership in trade. But, if the king violate the law, is there any fault on the part of the heirs, that the loss should ultimately fall on them? No ordinance expressly requiring, that it be recovered by the partner, it is a settled rule, that the loss must be borne by the heirs. But, in fact, according to MISRA's exposition of the text of NA'REDA (XIX), the debt should be recovered by the partner, as the stock should be preserved in the case of partnership in trade. To neglect it, though able to recover it, is an offence; and the person, who recovers the debt, may receive a tenth part of it, as in a case of salvage.

WHEN a loan on interest has been jointly advanced by five persons, if one die,

die, and his heir be present, the heir should conclude the transaction: but, if the successor reside in another province, then indeed the surviving partner should give notice to the king, through the means of his officers; and the king should depute thither an officer appointed by himself: but, if the king omit it, the partner in the loan should conclude the transaction, and send notice to the heir, that he may attend: however, should some cause prevent him from doing so, the partner may follow his own choice; no offence is thereby committed.

If the king conclude the transaction, he shall receive, in the order of the classes, a twentieth part from the property of a *Brâhmana;* a twelfth from that of a *Cshatrija;* a ninth from that of a *Vaisya;* and a sixth from that of a *Sûdra*. The case must necessarily be held similar to partnership in trade. Thus, in answer to the question, "who shall perform his duty, if one partner die?" the rule is propounded, "on failure of heirs, the king;" for that is shown in the case of partnership in trade. Is a tax to be paid to the king in consideration of his executing the business? In answer to this question, the rule is set forth, "let the king receive a sixth part &c." (XXII 1). But if it be foreign to the king, the difficulty is reconciled from the text before cited; "or, if there be no heir, another partner who *is willing and able to act; if there be no such person, all the partners*" (*XIX*). However, should the king forbid it, his commands must not be disobeyed: the king forbids not any thing without a special cause.

XLVII.

VRĬHASPATI:—To a paternal or maternal kinsman, and to a friend, a loan may be made on a pledge only; to others, with a surety, or on a contract written or witnessed.

This text belongs to the general title of loan and payment; for the reason of the law is equally apposite *in all cases of loan.*

If one of several partners in moneylending, being skilled in business, ask; "shall I singly advance a loan to the proposed borrower?" in that case, should they assent, the loan advanced is lent by all the partners: as

is

is declared by the preceding text (XLV 2). In what mode should the loan be advanced? in what case? The legislator replies, "to a kinsman &c;" to any kinsman or friend of the partners, it should be advanced on a pledge, and one of sufficient value should be taken (Book I, v. XI). The grounds of the law are these if the kinsman do not repay the loan, but say, "I cannot now repay it," compulsory means would be a breach of the regard due to him, and therefore the debt may be irrecoverable: but, if a pledge be taken, the debt may be recovered by the sale of it, at the expiration of the stipulated period, or at the end of eighty months or the like. From others, it is not necessary, that a pledge should be taken, he therefore mentions two modes according to the honesty, or dishonesty of the man, "to others &c." in default of a surety, a loan may be advanced to a dishonest man, on a contract written or witnessed.

XLVIII.

VRĬHASPATI: — AT pleasure *or without a time limited for payment*, may gold or silver be lent; but liquids and grain, for a limited time by the custom of the country must the loan and the payment be regulated.

AT pleasure, with, or without, a time limited for payment, may gold or silver be lent, but, for liquids and grain, a limited time is necessary

The *Retnácara*

THE time must be regulated by the custom of the country, and the payment must be regulated by the time agreed on Under the text of HA'RĬTA (Book I, v. XLIV 2) grain is doubled at the time of harvest, but, if no time have been limited, it is not more than trebled even after a hundred years therefore grain should be lent for a time limited to the next harvest; and, if it be not repaid at the stipulated time, it may bear wheel-interest. But interest is receivable on gold, silver, or the like, at the *monthly* rate of an eightieth part, therefore it daily accumulates at that rate. Afterwards, when the debt is doubled, it should be recovered, or wheel-interest be stipulated.

XLIX.

XLIX*.

VRĬHASPATI: — AFTER the time for payment has paſt, and when the intereſt ceaſes, *on becoming equal to the principal*, the creditor may either recover his debt, or require a new writing in the form of wheel-intereſt.

ON grain, though not paid at the time of harveſt, iotereſt is not *conſidered as having* ceaſed, *becauſe it has become equal to the principal;* and therefore wheel-intereſt does not ariſe: but, if a time were limited, wheel-intereſt may be required. Intereſt on liquids is ſimilar to that on grain; for, in the ſequel of the text, HA'RI'TA ordains, that "on clariſied butter, ſalt, and raw ſugar, the intereſt may make the debt octuple:" and this follows from the expoſition of the *Retnácara* on the text of HA'RI'TA. As grain is doubled at the time of harveſt, and, if the debtor cannot then repay it, is trebled and not more; ſo is wool and cotton; but the fibres of graſs, clariſied butter, ſalt and raw ſugar, in one year, become octuple. Therefore the expoſition of the *Retnácara* on this text ſhould be admitted. But reference is made to the cuſtom of the country: a loan ſhould not be made in ſuch a form, in a country where ſuch a cuſtom exiſts not; for this text is ſuperſeded by the text of NA'REDA (Book I, v. XLV I). In ſome parts of the country, grain is received back with an increaſe of half the loan; in others, with an increaſe of a quarter: the loan and payment ſhould be ſo regulated.

IT muſt be conſidered, that, if a partner make a loan, in contradiction to this law, at his own pleaſure, without a pledge, and without a time limited for payment, he incurs blame; as appears from the tenour of the text. But, if the other partners conſent to his making the loan at his pleaſure, there is no offence. Yet, if a loan be made to a kinſman without a pledge, and he endeavour to diſcharge the debt, but happen to be drowned with his family, the lender is not free from blame: ſuch is the method ſuggeſted by common ſenſe.

BUT ſome hold, that this text does not declare an offence, but ſhows how a loan ſhould be made. That is wrong; for, were it ſo, the text ſhould

* Book I, v. CCLV.

5. LET no prudent husbandman admit lean cattle, old, undersized, diseased, vicious, blind of one eye, or lame.

6. HE, by whose deficiency in cattle and seed a loss happens in the joint cultivation, shall indemnify all the cultivators:

7. This ancient rule has been declared for husbandmen.

THE law concerning loans has been already propounded under the title of loans and payment; now therefore, in declaring the law of partnership in loans on interest, it is concisely delivered: such is the meaning of the text. Consequently the various cases of pledge and so forth, which have been delivered under the title of loans and payment, must also be understood under this head: therefore, should a pledge be destroyed by the fault of all the creditors, it must be made good by all, and so forth. But, should the pledge be destroyed by the fault of one of the creditors, it must be made good by him; and if it be destroyed by the act of GOD, it is the debtor's loss: these and other rules should be considered as inductions from the reason of the law, or from express ordinances. Again; if the debtor die, the property may be recovered from the surety: but, in this case, if any one of the creditors, from a motive of tenderness or of knavery, release the surety, the fault is his. This and other rules should be admitted.

"HEAR the rules;" that is, what should be done by husbandmen and others. "Beasts of burden;" oxen. "Labourers;" servants employed in the business of husbandry. "Seed" fit for producing vegetation; in common acceptation, it signifies grain and the like; "Land;" fields on which grain is sown. "Implements of husbandry;" ploughs and the like. Agriculture should be conducted in partnership with persons, who are equally provided with these requisites, that no dispute may subsequently arise because less has been contributed by one partner *than by another*.

A PORTION of land reserved for grass is called "a common pasture:" so the *Retnácara*. Neither a common pasture, nor a place reserved for cattle, nor the king's highway *should be cultivated*: as is inferred from what precedes.

have been inſerted under the title of loan and payment, immediately after the text there quoted (Book I, v. XI).

L.

VRĬHASPATI:—WHAT has been lent by two or more jointly, muſt be jointly demanded by them: any one of ſuch lenders, who refuſes to join in the demand, ſhall forfeit his ſhare of the intereſt.

IF any one of the joint lenders aſk; "ſhall a loan be made to this propoſed borrower?" In that caſe, if the others ſay, "we will jointly lend it," let all *ſubſequently* join in the demand of what has been ſo lent: but if one, though able, do not join in the demand, he ſhall forfeit his ſhare of the intereſt. But if the authority for making or refuſing loans be committed to one perſon, ſince it becomes his part to demand payment, and the act was done with a view to gain, it is not fit, that another, who does not join in the demand, ſhould forfeit his ſhare of the intereſt.

LI.

VRĬHASPATI:—THE law concerning loans has been already propounded, and *therefore* it is now conciſely delivered; hear the rules for huſbandmen and others, which are thus declared:

2. Prudent men conduct cultivation in partnerſhip with thoſe, who are equally provided with beaſts of burden, labourers, ſeed, land and the implements of huſbandry.

3. *They ſhould* not *cultivate* common paſtures, places reſerved for cattle, nor the king's highway; let them purpoſely avoid barren land and fields infeſted by vermin:

4. Sowing, at the proper ſeaſon, land well ſituated to receive and retain water, capable of irrigation, ſurrounded with fields, and well tilled, the cultivator will enjoy a produce.

5. LET

5. LET no prudent husbandman admit lean cattle, old, undersized, diseased, vicious, blind of one eye, or lame.

6. HE, by whose deficiency in cattle and seed a loss happens in the joint cultivation, shall indemnify all the cultivators:

7. This ancient rule has been declared for husbandmen.

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"HEAR the rules;" that is, what should be done by husbandmen and others. "Beasts of burden;" oxen. "Labourers;" servants employed in the business of husbandry. "Seed" fit for producing vegetation; in common acceptation, it signifies grain and the like; "Land;" fields on which grain is sown. "Implements of husbandry;" ploughs and the like. Agriculture should be conducted in partnership with persons, who are equally provided with these requisites, that no dispute may subsequently arise because less has been contributed by one partner *than by another*.

A PORTION of land reserved for grass is called "a common pasture:" so the *Reṇácara*. Neither a common pasture, nor a place reserved for cattle, nor the king's highway *should be cultivated:* as is inferred from what precedes.

cedes. This is merely an incidental command respecting agriculture; it is not here supposed to become a subject of ligitation. Or it may be thus explained: if a man unite with one, who cultivates land reserved for cattle, the king may say "why dost thou cultivate land reserved for cattle?" if it be answered, "by his partner's directions;" he may be reproved in these words, "shall the town be destroyed by thee, because he directs it?" therefore partnership should not be formed with a man, who thus transgresses the law, and it is an offence in the partners, who share profit obtained by this breach of rule.

"BARREN land" does not even support the vegetation of grass; how should grain be raised there by the utmost labour? From the number of small cells, "land infested by vermin" affords no produce; and the ploughs and other implements are much injured: therefore partners in husbandry should avoid such land; or a man should avoid it, lest, on seeing the produce small, he be reproached with not having well tilled his field. This is a direction to husbandmen to avoid an unproductive soil.

Low land, capable of receiving much water, and whence the water is not early drained; such clayey soil, surrounded with fields on all sides (that the trespasses of cattle may be prevented without trouble), and well tilled at the proper season, in the month of *Mágha* and so forth: the terms are so explained in the *Retnácara*. This text is an incidental direction for agriculture. Or, where five persons jointly undertake cultivation with their own cattle and seed respectively, and agree to divide the produce after paying the king and others their due proportions of the produce, the text is applicable to such persons; therefore they should furnish equal proportions of seed: and, where *Bráhmanas*, or others, jointly undertake agriculture on their own fields and with their own seed-grain respectively, and the agreement is nearly the same with that abovementioned, the text is applicable to them. In the first case, let the partners in husbandry cultivate land other than common pastures and so forth; two verses (LI 3 and 4) are intended to direct this: a direction concerning land and so forth was necessary for partners in husbandry. Both verses, propounding the mode of distinguishing land, are intended to show, that, in the third case, the

land

land should be equally good. At present it often happens, that men join in cultivation for the produce of their own fields only. The direction concerning land is here a repetition of the subject of cultivation; some additional meaning is intended; that is, perfect equality is not required.

"LEAN cattle &c." This text is applicable to the three cases.* and is intended as an instruction *to husbandmen*. Thus he, who purchases cattle in the intention of cultivating land, should purchase such as are different from what is described in the text. It is incidentally mentioned: for if he possess not the price of excellent cattle, he may even accept such as are there described, to employ them on his business. If the cattle and so forth, belonging to all the partners in husbandry, be bad, they may in that case be admitted: otherwise, husbandry could not be conducted in partnership, were the cattle and so forth, belonging to every partner, bad: and it is indicated by the expression "who are equally provided &c." (LI 2). The exception against the cattle described removes the doubt, whether cattle, being equal in number, may be admitted, though unequal in strength and other qualities: therefore parity is required, according to circumstances, in strength, qualities and number.

IN the second case, the text, as explained in the *Vivâda Chintâmeni*, directs (v. LI 6), that the loss shall be sustained by him, through whose want of materials, the field has lain fallow. Thus one partner is appointed to sow one field, and the other partners being similarly appointed *to different parts of the joint business*, if the field remain unsown by the fault of the cattle belonging to one partner, and cannot, from the excess of rain, be sown on a subsequent day, and the field therefore remain fallow; in this case, grain, equal to the produce of similar fields, shall be deducted from his share; or if seed, furnished by one partner, be sown in a field cultivated by all the partners, and no plants vegetate, the seed being old and bad, in that case also it is his loss. In the case, where the partners join in the cultivation only, if the field of one remain unsown, from the fault of another's cattle, he is entitled to receive, from the owner of the cattle, the *estimated* value of a crop from that field.

* Cultivation by a single husbandman on his sole account, by husbandmen rearing land in partnership, by the separate owners of land tilling the whole in partnership.

If one of the partners in husbandry be unable to act, his task should be finished by another person; for YA'JNYAWALCYA says, "this law is declared for partnership among priests who jointly officiate at holy rites, and among husbandmen or artificers" (XXXI). The shares should be distributed in proportion to the cattle, or things furnished; and seed and the like should be taken in proportion to the quantity of land or the number of cattle: but, if the proportions of seed and the rest be unequal, the adjustment should be made on their value; otherwise, there can be no certainty in regard to the shares: however, should there be a specifick agreement for unequal shares, the distribution must be made accordingly. All should join in preserving the field and the like: if one refuse to contribute to its preservation, he shall forfeit his share of the profit: and profit is thus ascertained; "what remains over and above the price of cattle, seed &c," if one preserve the common stock by the utmost exertion, he shall receive a tenth part of it. Him, who has recourse to fraudulent ways, let the partners expel without profit (XXXI): consequently, should a fraud committed by one of the partners be detected after the land belonging to all the partners has been sown in the month of *Bhádra*; in that case, restoring to him his stock in seed, cattle and the like, and giving him half the produce of his own land, let them expel him: but, if they cultivate in partnership the king's land, the payment of half the produce to the partner expelled is not admitted. Should one of the partners die, let the king, or other person, according to circumstances, keep his share of the stock, and deliver it to the heirs *when they appear*. All this, premised under the head of partnership in trade, must also be understood in this case.

LII.

VRÍHASPATI:—A MANUFACTURER of gold *and silver*, of baser metals, of thread, of wood, stones, and leather, or a man who is skilled in minute discrimination, is called by the learned *Silpi*, or *artisan*:

2. And, when goldsmiths and the rest exercise their arts jointly, they shall receive pay in due shares according to their work.

ONE

One reading gives, "a manufacturer of gold, silver, and leaves;" that is, leaves of the palm tree and the like. Chandeswara reads "thread" (*sútra* instead of *patra*).

"A MANUFACTURER of gold and the rest;" one, who alters the form of the substance; who works it up, from a *shapeless* lump, into ornaments or the like. "Skilled in minute discrimination;" well acquainted with minute parts; able to distinguish the portions of copper or silver contained in gold and so forth; discriminating the smooth and good parts of leaves, wood, and the like; or minutely acquainted with the natural qualities of the substances, and able to distinguish them.

MANUFACTURE and such minute discrimination are severally called arts; but both united constitute superiour art: thus, if some goldsmith knows not the assay of gold, but makes ornaments and the like, he is an artisan; and so is one, who does not manufacture, but assays gold; and herein many unite, because many are required to confirm an assay. It is objected, since there can be no joint exertion in assaying gold and the like without property, there can be no separate head of judicial procedure; therefore the *specifick* mention of this was superfluous in discussing the title of concerns among partners. It should not be answered, when several persons are jointly employed in assaying gold belonging to any man, there is partnership: were it so, it should be mentioned under the title of non-payment of wages, for they are hired workmen. Nor should it be argued, that "skilled in minute discrimination" is not an independent term, but an epithet of "manufacturer," and that the sense is, "a manufacturer of gold and so forth, if he be skilled in his art, is called *silpi* or artisan." Were it so, a manufacturer unskilled in his art, not being *expressly* mentioned, would be excluded from this head of judicial procedure; if skill must necessarily be supposed in all manufacturers, the epithet is superfluous; and it is irregular to employ it as a descriptive *and consequently superfluous* epithet. Nor let it be argued, that persons, who are skilled in assaying, buy and sell gold and the like; by their skill in assay distinguishing bad gold from good, they buy cheap and sell dear; and thus the mention of skill in assay has a reference to stock. Were it so, this would *fall* under the head of partnership in trade. To the objection thus proposed the answer

ſwer is, when gold or the like is intruſted to a goldſmith to work into ornaments and the like, and he receives hire in proportion to the ſpecifick quantity aſcertained by weight or otherwiſe, he is called a workman, but of a different deſcription from thoſe named in treating of ſlaves and hired ſervants. Some perſons aſſay gold and the like for many different traders; they are not the particular ſervants of any one man, but receive pay in proportion to the ſpecifick quantity aſcertained by weight or otherwiſe, and are called artiſans: at preſent ſuch perſons are often ſeen in the employment of ſorters of money. From the practice of ſuch a ſcience, do they become artiſans? This, like the manufacture of ornaments and other arts, not being included among the eighteen ſciences, ſhould be conſidered as a mechanical art.

Thus ſome expound the text. Others explain the term, "ſkilled in gain," that is, well acquainted with the wages due to his labour, and this knowledge is an excellent qualification for an artiſan. The ſenſe is the ſame on the reading of Chande'swara and others, "well knowing the fruit *of his labour*" (*phalábhijnya*, inſtead of *calábhijnya*).

Jite'ndriya, Hela'yudha and Va'chespati-misra read "baſer metals" inſtead of ſilver (*cupya* inſtead of *rúpya*). There is no material difference. Leather is in the plural number to imply other ſubſtances, for rope, balls of ſilk, bones and other things muſt be underſtood, according to the circumſtances of the caſe. otherwiſe, there would be no particular rule for ſuch arts.

"According to their work" (LII 2): according to the work performed by four partners reſpectively, they ſhall receive their reſpective ſhares. For example, one melts the metal, another hammers the maſs of gold or the like into the form of ornaments, a third ſolders the parts, and a fourth prepares the parts to be ſoldered They ſhall receive pay according to the work thus, or otherwiſe, diſtributed.

LIII.

Ca'tya'yana.—If four artiſans be jointly employed, a young apprentice,

apprentice, a more experienced ſcholar, a good artiſt, and a teacher, they ſhall receive in order one ſhare, two, three, and four ſhares, of the pay *divided into ten parts.*

THESE four (the apprentice, the ſcholar, the artiſt and the teacher) are diſtinguiſhed by their ſkill in manufacture.

The *Retnâcara.*

THEREFORE the pupils, who melt metals, and ſo forth, under the directions of a teacher or other artiſt, receive one ſhare: and the pupil ſhould neither be the apprentice of another, nor one maintained by the inſtructor himſelf; conſequently there is no contradiction to the text, which ordains, that the teacher ſhall receive the gain on his pupil's labour (Book III, Chapter I, v. XX). But ſome hold, that the pupil's ſhare is mentioned in contradiſtinction to the more experienced ſcholar and good artiſt; and that the pupil's ſhare ſhall be received by the inſtructor.

THE more experienced ſcholars, already taught, execute coarſe work; they are inferiour to the good artiſt, becauſe they are unable to execute fine work. The good artiſts, having acquired experience, and being already ſkilled in manufacture, execute fine work, ſuch as ſoldering the parts: in ſhort, they nearly accompliſh the buſineſs. The teachers inſtruct all the workmen as pupils; or, equal to the good artiſts, they alſo know the quantity of the parts, and are therefore, in ſo much, ſuperiour to them.

IF there be an apprentice and teacher only, and no experienced ſcholar, or good artiſt, what is the rule in that caſe? Who executes the work of the experienced ſcholar and good artiſt? If the apprentice do it, he is an artiſt: therefore the teacher ſhould receive four ſhares; and the artiſt, three ſhares of the pay divided into ſeven parts. If he do not cauſe him to execute the work of a good artiſt, the teacher ſhould be puniſhed. But if there be a ſpecifick agreement in this form; "thou ſhalt only perform the work of an apprentice," the work of the experienced ſcholar and good artiſt being executed by the teacher, he ſhall receive nine ſhares; and the pupil, one ſhare only. If the apprentice execute the work of an experi-

enced ſcholar, and the teacher perform his own part, and that of a good artiſt, the apprentice ſhall receive three ſhares; and the teacher, ſeven *ſhares of the pay divided into ten parts.* In fact the definitions of apprentice and the reſt are delivered in conformity with the etymological ſenſe of the terms; but he, who, under the directions of another, any how executes work with occaſional miſtakes, is an apprentice, if he be ſubordinate to another. He, who, previouſly inſtructed, but, from want of practice in the particular exertion of manual labour, being incapable of fine work, executes buſineſs ſlowly, is called "a more experienced ſcholar." He, who is capable of executing work, and is practiſed in the application of manual labour, but ſometimes has occaſion to aſk inſtructions, is called a good, a ſkilful, or an able, artiſt. But the inſtructor, like a teacher of the *Védas*, directs others, and can accompliſh the work with certainty. In this mode ſhould the law be interpreted: conſequently there is no definite work for the apprentice and the reſt.

In this caſe, hire, *ſalvages*, and *ſo forth*, *muſt be underſtood, as in* partnerſhip among traders: and, if any thing be deſtroyed by the fault of one among four perſons, it muſt be made good by him; the owner ſhould not refuſe to pay the wages of all the workmen. But, if any thing be taken, *on a falſe* pretence, *in the preſence of the teacher, who brought* the good artiſt and the reſt, the wages of all the workmen may be withheld; and the others ſhall receive their ſhares of pay from the teacher, or from the perſon in fault. This and other caſes muſt be underſtood.

LIV.

VRĬHASPATI: — WHERE ſeveral men jointly build a houſe or a temple, or dig a pool, or make utenſils of leather, let the chief workman receive a double ſhare of the pay.

"THE chief workman;" the principal workman.

The *Retnácara.*

SOME remark, that diſtinct ſhares, directed for four perſons (the apprentice and the reſt), ſhould be underſtood of work other than the building

of

of a houſe and the like; for VRĬHASPATI has not ordained ſuch a diſtribution in the caſe of a houſe and ſo forth; but the principal workman, employed in the building of a houſe and the like, ſhall receive a double ſhare, and the others equal ſhares of the pay. But that does not coincide with the *Retnacara*, where it is ſaid, 'the text of CA'TYA'YANA (LIII) ſuppoſes one perſon giving, and another receiving, inſtructions; in other caſes the chief workman ſhall receive a double ſhare; and thus there is no inconſiſtency.' Therefore, ſhould an experienced ſcholar and a good artiſt only join in the work, without one perſon giving, and another receiving, directions, the rule follows the text of VRĬHASPATI. The preſence of perſons giving and receiving directions does not ſuppoſe a teacher and pupil, but a workman of little ſkill, and another of great ſkill.

THE meaning conſequently is this; firſt mentioning the manufacture of gold, ſilver, cloths and ſo forth, and afterwards the building of a houſe, the legiſlator anſwers in the laſt text (LIV) the queſtion which ariſes on the former text (LII); "how ſhall pay be received according to the work in all caſes, whether it be the manufacture of gold, or other work?" In all caſes, whether it be the manufacture of gold or other work, the chief workman ſhall receive a double ſhare of the pay: and the text of CA'TYA'YANA is irrelevant. It ſhould not be argued, that the text of CA'TYA'YANA relates to caſes other than the manufacture of gold and ſo forth; for the *laſt* text (LIV) provides for other caſes. Nor ſhould it be argued, that both the texts of VRĬHASPATI are reciprocally illuſtrative of a general ſenſe, but do not comprehend other caſes. Were it ſo, that would be derogatory to the ſage, ſince a law muſt exiſt in regard to work not mentioned in either text. It is ſaid, the firſt text (LII 1), interpreted in the ſame ſenſe with the text of CA'TYA'YANA, may be a declaration of the law for the caſe where four artiſans are jointly employed; and the laſt text (LIV), where two workmen are employed. It ſhould not be objected, that a different mode of partition is incongruous, becauſe leather is mentioned in both texts. There may be different modes of partition, the laſt text intending ornaments or utenſils of leather, and the firſt, other manufactures of the ſame material: thus, when a covering of leather for a ear is ordered by the owner, if one workman be ſkilful, and others be alſo employed, the chief workman ſhall

receive

receive a double ſhare of the pay. To this propoſed expoſition the anſwer is, it does not ſeem reaſonable to deſtroy the concordance between two texts of VRIHASPATI's own code, *merely* for the purpoſe of reconciling one of them with the text of another legiſlator. In fact, ſince there can hardly be perſons receiving and giving inſtructions in the building of a houſe, or the digging of a pool, and the like, the rule of diſtribution between two workmen might be ſuggeſted; but, four perſons being required for the manufacture of ornaments, the rule of diſtribution among four is proper: and this reſults from what is ſaid in the *Retnácara:* thus, in building a houſe, one man carries the bricks and other materials; but another, being an *intelligent* workman, conſtructs the edifice: ſo, in building a habitation of graſs and wood, ſome perſon brings and throws up the graſs, wood, or other materials, and another conſtructs the houſe. In digging a pond, one digs the ſpots which are marked to prevent inequalities, or notices what ſhould be taken or left by all the workmen; the others dig after him. In making utenſils of leather, one ſews the leather; the others, as pupils, ſtretch it. Is there not employment for four perſons in building a houſe, as well as in making ornaments? Thus, one carries the bricks; another removes their inequalities and fits them for the pillars or other uſes; another again cements them in their proper places; a fourth, to raiſe a ſtraight wall of maſonry, cauſes the bricks to be placed properly: in a building of graſs or wood, one man carries the wood; another cuts away rotten parts with an axe, and fits the wood; a third, by labour, joins two timbers; a fourth lines the wall. In all three inſtances, reference may be made to ſkill in work: and the ſame may be underſtood of other work, as the caſe may be. To this queſtion the anſwer is, if it be ſo in regard to the wall, ſtill there is no employment for four perſons of different deſcriptions, in roofing the houſe, nor in conſtructing a houſe of bamboos, or building a houſe with unburnt bricks. In the text above cited (LIV) the term "houſe" intends ſuch houſes. But, where there is employment for four perſons, the former text (LII 1) is applicable: and this is actually ſaid by the author of the *Retnácara;* 'the text of CA'TYA'YANA ſuppoſes one perſon giving, and another receiving, inſtructions:' and the ſame ſhould be underſtood of other caſes. If three perſons join in work, then the diſtribution ſhould be ſettled in this form; for the rule is admitted, becauſe they are included by their employments in the deſcriptions of apprentice and ſo forth.

THUS

Thus some expound the law In some provinces it is the practice, in regard to the roofs of houses, to give the same pay to the man, who throws up the grass, and to him, who makes fast the string, but less than the pay of the thatcher and in building houses of masonry, greater wages are given by the owner to one employed as chief workman, than to the others who assist him: but other labourers again carry the bricks and perform the rest of the labour This and other usages subsist. There can be no benefit from expatiating on the subject, for wages are paid according to settled usage, and workmen are employed on special agreements So much has been said to explain the law it should be received as above explained.

LV.

VRĬHASPATI —This has been ordained by wise legislators for a band of musicians let him, who marks the time skilfully, take a share and half, and let the singers have equal shares.

"He, who marks the time skilfully" *(talajnya)*, "*tala*" is explained by Amera, measuring time and performance, that again is explained in the commentary on his dictionary, the measure of the appointed time of utterance, one or two moments, and the discrimination of exact performance. Consequently, in the case of singing, the utterance of certain letters *or syllables* of the song after once, twice, or thrice uttering certain other letters *or syllables*, is measurement of time and called *tala* in fact it signifies measuring the time during which a word or sound must be held, and the time when another syllable should be uttered after the utterance of that sound, as in the verse of the *Gitagovinda*, "*Herir idha mugdha badhu nicare vilasini vilasati kelipare*,* a momentary pause is made at "*heri idha*," and the sound of *the last syllables of* "*badhu*" and "*nicare*" is prolonged during the twinkling of an eye, or during half that time, or during a very minute space of *time*. *this* is called measuring *time* *Measure of performance* consists *in* regulating the effort of the finger with his tongue or other organ of speech to utter the letter or syllable the intimation of it by a contemporary stamp

* Heri exults in the assemblage of amorous damsels Asiatick Researches, vol 3 pa 187 Or as verbally translated by the same hand, Heri, O *my* amorous *fr end*, delights in the higher pleasures, in the assemblage of beautiful dams ls

of the foot on the ground, or by clapping the hands, is called *(tála)* beating time. Though all the common acts to be done by the dancer, the musician, and the rest, with the utterance of low sounds, be not indicated, nor even the performance of loud musick, yet the step or gesture, corresponding with a difficult passage, is marked; how is the performance of a dancer and the rest measured? By the word "performance" steps and so forth are signified: consequently the hint to perform a certain step or gesture at the same time with the utterance of a certain sound, with which sound it ought to be performed, is the measure of performance, and is called *tála*: measure is in this instance explained discrimination, and that consists in distinguishing the parts of the performance to be executed at a certain time, namely that a certain act must be done immediately after a certain time: this is mentioned as suggested by the single term of "fingers." But in fact, whatever act is to be done, or sound to be uttered, immediately after a certain time, and whatever stroke on the ground or the like with hand, foot, and so forth, is to be given during the performance of musick at a certain time according to the laws of musick and singing, the notice of that time, or hint for the performance, is meant by "measuring time and performance." Consequently beating time *and prompting* is applicable to singing, playing, dancing, and so forth.

Was it not superfluous to say, "let the fingers have equal shares;" for that was already suggested by the allotment of a share and a half to him, who marks time skilfully, since the marking of time belongs to singing only? No; for the term "marking time skilfully" denotes one who is skilful in marking time. Consequently he, who teaches the rest to observe time skilfully, is denoted by the term. In this country such a man, in singing and the like, is the man who begins the song; for the rest sing as they are instructed by him, and the musician also plays the musick adapted to that song. In dancing and the like, a musician is sometimes *the leader of the band*; sometimes a dancer *leads it*. All this should be understood; for such a practice is remarked.

The term "this law" extends the law for artisans to a band of musicians. Consequently, if persons of two descriptions are employed, as fingers and musicians,

muſicians, or the like, the rule of diſtribution among two perſons is applicable; but if it be an employment of perſons of four deſcriptions, the rule in regard to four perſons is applicable: ſo, if there be employment for perſons of three deſcriptions, the rule of diſtribution among three perſons muſt be underſtood. " A ſhare and a half;" half more than one ſhare; let him, who marks the time ſkilfully, take one ſhare together with half a ſhare: ſo the *Vivâda Chintámeni* and *Ratnácara*. If ſome *of the muſicians* die, their ſhares of the pay, for ſo many days as they were employed, ſhall be delivered to their heirs, or to the king; and let the king receive them for ſafe cuſtody: but let the aſſociates of the deceaſed cauſe the work to be finiſhed by ſome other perſon, whether the employment be that of ſinging or dancing.

LVI.

VRĬHASPATI:—IF, *in time of war*, any property ſhould be brought from the hoſtile territory by robbers, *or irregular ſoldiers*, authorized by their lord, they ſhall give a ſixth part of it to the king, and divide the reſt among themſelves in due ſhares.

2. LET their chief receive four ſhares; the moſt valiant of them, three; the moſt active, two; and the reſt ſhare and ſhare alike.

THE *Vivâda Chintámeni* explains the "chief," he who exerts mind and body; "valiant," reſolute; "active," poſſeſſing ſuperiour ſtrength. But CHANDE'SWARA, ſo explaining the chief and moſt valiant, ſays the third deſcription means active in compariſon with the reſt.

WHERE robbers make incurſions, one of them commands as their leader; ſome, armed with bows, ſwords, or the like, are poſted on the road to prevent the motions of the people; others plunder; and the reſt carry the loads: ſuch an arrangement is ſignified by the text. The commander is the chief; for, ſkilled in counſel, uniting the reſt, knowing the means of ſubſiſtence, he is pre-eminent: and all the reſt act by his orders. This is expreſſed in the gloſs.

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"he who exerts mind and body" His associates, who recede not from battle, but despise death, are described by the term "most valiant" and these are posted on the road to prevent a surprise. Others, while the enemy is repelled by the most valiant, plunder foreign houses. these are deemed most active. Those, who carry loads, furnishing corporal labour only, are inferiour to the rest, and they receive share and share alike. "Active," expounded in the *Vivada Chintamem*, possessing superiour strength, will intend the same, if it be explained as denoting a person endowed with the strength requisite for breaking open doors, to enter foreign houses

The shares should be distributed according to the numbers of each description thus, if there be one chief, ten valiant, four active, and eleven inferiour robbers, the plunder should be divided into fifty-three parts but if the active robbers be able to perform the office of the most valiant, they may each receive three shares by special agreement

LVII

CATYA'YANA.—OF *an enemy's* property, brought from a foreign country by robbers commissioned by their lord, the king shall have a tenth part, and they shall divide the remainder by this rule:

2. The leader of the robbers shall have four shares of it; the bravest of his men, three, the most active, two, the others, equal shares.

3. IF one of them, when they set out on their adventure, should be taken prisoner, whatever he may give for his ransom, the rest shall pay equally with him.

CHANDE'SWARA says, "a tenth part, or sixth part, should be understood according to the nearness or distance of the foreign country." But MISRA holds, that the texts carry an implied sense Thus, if the king protect the robbers, he shall receive a sixth part, being very distant, if he do not take measures *to protect them*, he shall have a tenth part only. Others hold,

hold, that a fixth part ſhall in general be received; for taxes have been ordained at the ſame rate: but, if the expenſe and toil of the robbers be great, in conſequence of their going to a very diſtant country, the king ſhall only receive a tenth part; and this rate ordained by the text is in the nature of a favour: it muſt be underſtood, that the king ought not in this caſe to receive more than a tenth part.

" If one of them ſhould be taken priſoner &c." if one of the robbers going to and fro be taken priſoner, and pay ranſom to the captor for his releaſe, the remainder of the plunder, after deducting what is given for his ranſom, ſhould be divided in the mode abovementioned: but if the ranſom be given after partition, it ſhould be paid in equal ſhares by all the robbers; as ſuggeſted by the text, " the reſt ſhall pay equally with him;" and becauſe what had been already given, could hardly have been received before his capture. Such is the opinion of MISRA, and likewiſe of CHANDE'SWARA; but he expounds " taken priſoner," confined or ſtopped. In fact that ſhould be admitted; for, if he be taken priſoner, he muſt of courſe be confined near the royal reſidence; and if he be ſtopped, being watched, it is poſſible he may afterwards be taken priſoner: it is therefore neceſſary, that he ſhould, if poſſible, give money to ſatisfy the guards. That ranſom is diſburſed for *the behaif of* all the robbers. Virtually the ſame ſenſe is deduced from both expoſitions. If one be taken priſoner, the reſt may alſo be apprehended on his information: therefore his ranſom is a benefit to the reſt. This appears to be the meaning of the ſage.

FROM the mention of partition, after giving a part of the plunder to the king, it follows, that the robbers have property in the wealth ſeized by them: and that property is by occupancy, as the king's right of property, acquired by conqueſt, in the wealth of a foreign realm. The king honeſtly acquires property in that wealth gained by occupancy, through his own exertions, by victory in a juſt war againſt another armed prince of equal power (Chap. IV, v. XX). But the property of robbers, acquired by occupancy, through their own exertions, in an unjuſt war, unauthorized by law, againſt men ſleeping, unacquainted with the uſe of arms, and deficient in ſtrength, or by intimidating *the owners*, belongs to the quality of darkneſs (Chap. IV, v. XXVII 3).

Is not wealth, ſtolen by a ſingle robber from the manſion of a ſleeping houſeholder, the property of the robber? VACHESPATI BHATTA'CHA'RYA anſwers in the affirmative.

IT is ſaid, a perſon, taking property which lies before the owner ſitting and awake, may make it his own. It cannot be objected, that the property, which is thus veſted in the thief, is annulled by the occupancy of the owner. Even in the caſe of conqueſt, the conqueror's property would be annulled by the occupancy of the hoſtile prince. That is wrong; it muſt be affirmed, as is reaſonable, that occupancy is not a mere acknowledgement *of ownerſhip or acceptance of poſſeſſion*, but the exerciſe *of it:* thus, wherever kings, acknowledging no human ſuperiour, exerciſe authority approved by the law, even there property ariſes; the exerciſe *of dominion over effects* by men, (whether they be robbers or not,) who acknowledge a human ſuperiour, namely a king, if it be authorized by him, takes full effect; he, who exerciſes ſuch *dominion*, has property. If the exerciſe *of dominion* by powerful robbers be admitted, even without the king's authority, ſtill the occupancy of a proprietor, ſupported by the double power of the king and of juſtice, prevents the occupancy of a weaker thief: and thus the property is in the owner, not in the thief. In the caſe of conqueſt and defeat of kings, whoever ſurpaſſes another in regal duties, in juſtice, and in armed forces, can prevent another's occupancy; and property is veſted in him: thus the right is aſcertained by diſcriminating the power of occupancy *or retaining poſſeſſion;* and property ſo eſtabliſhed muſt neceſſarily be admitted.

OTHERS deduce from the expreſſion, " property brought by robbers authorized by their lord" (where the word lord intends the king), that robbers acquire a title to what is ſeized by them with the king's aſſent, as warriours gain property in the wealth of a foreign country. But robbers, unauthorized by the king, do not acquire a title *to effects ſtolen.* SU'LAPA'NI does not admit the property of thieves in ſtolen goods; and the text quoted from NA'REDA ſuppoſes robbers authorized by the king.

THAT is queſtionable. Since it is neceſſary to eſtabliſh occupancy as the obvious cauſe of property in waifs, and in the wealth of foreign *conquered*

kingdoms, the right of unauthorized robbers, suggested by the literal sense *of the text*, cannot be disproved without much trouble; and there appears no occasion for such trouble: the reverse of the literal sense of NA'REDA's text would not be pertinent.

WHAT then is the meaning of the expression, "authorized by their lord?" It intends punishment of *robbers* seizing the property of others, without authority from their lord; for the *Mahábhárata* and other works direct, that robbers should be expelled from the kingdom: but those, who rob with permission from their lord, are his subjects, acting in his service. Such a king is contemptible, because he receives property partaking of the quality of darkness, and because he injures others. But, if any king, not afraid of *committing* injustice, act in this manner, the sage has taken the trouble of regulating the partition: but this legislator has not authorized robbery. The expression, "brought from a foreign country," forbids the authorizing of robbery in his own dominions, lest the kingdom be destroyed. But, if any thieves rob in their own country, the same distribution of shares should be understood. And, should they rob without the king's assent, whether it become known to the king or not, their shares should be the same. This and other *rules* may be inferred from reasoning.

IF those robbers be taken prisoners, what is the mode of proceeding in that case? The king should cause the property to be restored *to the owner*. What king? he, who protects his subjects; or he, who protects robbers? The king, who protects his subjects, should cause the property to be restored *to the owner*. Shall the robbers, in that case, be punished, or not? *The answer is*, how should the king punish them, since he is not their lord? Who shall receive the sixth part which is payable to the sovereign? The payment of it by the robber being necessary, he shall pay it to the king, before whom he is brought. Should the protector of the robbers enter into a contest with the prince, who protects his subjects? Though it be not directed by the law, he ought, on the reason of the law, to contend with him: for how should he remain silent, having himself authorized the seizure of the property of others? and, the robbers having acquired property partaking of a dark nature, in the stolen goods, if he do not contend with a foreign king who seizes those

goods,

goods, how does he protect his own subjects? Or if he do not protect them, how can he take revenue, for it would be inconsistent with the following text?

LVIII

MENU —THAT king, who gives no protection, yet takes a sixth part of the grain as his revenue, wise men have considered as a prince, who draws to him the foulness of all his people.

IF he cannnot give protection, let him restore the sixth of the grain he has received, and the king, even though he *generally* protect his subjects, should not take his revenue from them, if he cannot recover their property from robbers.

SOME hold that the king, for the purpose of protecting the owners of property, should punish robbers whose place of abode is in a foreign territory, for no distinction is intended in the following text, between robbers coming from foreign countries, and thieves residing in his own dominions.

LIX.

MENU:—IN restraining thieves and robbers, let the king use extreme diligence.

IT is consistent with common sense to punish robbers apprehended by guards, whether they be inhabitants of foreign countries or of the same province. It is no judicial practice nor induction of common sense, that, when robbers, taken in the fact, are brought before the king by his officers, he should inquire, and inflict punishment, if he discover them to be inhabitants of his own dominions, but release them, if they be inhabitants of another country Were it so, there would be no punishment for robbers, who live in mountains and caves ruled by no king.

If *robbers coming from foreign* dominions be punished, when taken in the fact, their punishment cannot afterwards be opposed; nor can their protec-

tor

tor interfere to prevent their chaſtiſement. But the unjuſt king, apprehending the publicity of the protection, which he affords to robbers, though he may deſpiſe the conſequences of his iniquity, may not *be willing to* make his conduct publick. It is ſaid, he is not guilty of injuſtice in protecting the robbers. That may be true, but he ſhould himſelf inflict puniſhment. He ought not to authorize robbery; nor ought he to permit pain to be inflicted on another, whom he has authorized to rob.

But in the caſe of robbery without *previous* authority, he truly authorizes it when he receives a ſixth part of the plunder. But, if he receive not that ſixth part, he ſhould himſelf puniſh the robbers or reſtore the goods to the owner. If robberies be committed in his dominions with his permiſſion, ſince it is neceſſary, that he ſhould protect both *the owner and the thief*, he ſhould cauſe the property to be reſtored to the true owner, and himſelf pay a fine; caſting the amount of that fine into the water. But according to the opinion of thoſe, who do not admit the amercement of kings, penance only ſhall be performed. If there be an univerſal monarch, poſſeſſing authority over all countries, and to whom all *other* princes are ſubordinate, may he impoſe fines on kings? This queſtion ſhould be examined under the title of robbery.

We may affirm, that, for the purpoſe of obtaining victory over a foreign and ſtronger kingdom, a king, deſirous of reducing the power of that kingdom, commiſſions robbers, that the ſubjects, diſtreſſed by their depredations, may deſert that realm; and that the riches of that kingdom may be thus diminiſhed, and victory be obtained over it. This text has been delivered by the ſage, as a rule of partition among robbers in ſuch caſes. The robbers have property in goods ſo taken, as warriours have property in horſes and elephants of war, in arms and the like: but property in wealth acquired by conqueſt in open war partakes of the quality of truth (LVIII); and the property of robbers partakes of the quality of darkneſs; for it is gained by exciting terrour, or by the murder of unarmed, timorous and ſleeping men, and is diſapproved by the law. However, the law *permits a king* to reduce *the power of* a *foreign* kingdom, by means of robbers, with a view to conqueſt; but the recourſe to robbery from a motive of avarice, to

 increaſe

increaſe his own treaſure, is not juſtifiable: the law does not aſſent to the depredations of a king influenced by avarice; and the ſage has not declared a rule of partition for ſuch caſes. But *obedience to* the law itſelf, not avarice, muſt be the motive for the conqueſt of a foreign realm.

LX.

YA'JNYAWALCYA:—WHATEVER be the *rights and* duties of a king protecting his own realm, even all thoſe devolve on him, who ſeizes a foreign kingdom.

To expatiate *on this ſubject* would be ſuperfluous.

LXI.

CA'TYA'YANA:—THE law *before* propounded relates to all partners, whether merchants, huſbandmen, robbers *commiſſioned in war time*, or artiſans, when they have made no ſpecial agreement for their ſhares.

WHEN they have not made a ſpecial agreement reſpecting their ſhares. CHANDE'SWARA ſo expounds the text. Some explain it, "when they make a partition without having *previouſly* ſettled, what ſhall be the ſhare of each *partner*."

OTHER partners, not already mentioned, are comprehended in this text, *as ſervants, boatmen, and others, working in partnerſhip. In theſe caſes alſo*, the chief is entitled to a double ſhare. If the labour be of three, four, or more kinds, one additional ſhare is allowed for each degree of ſuperiour labour: however, it ſhould be admitted from the reaſon of the law, that the ſhares ſhall be equal, if the labour be of different natures but equal.

IF ſome king, or rich man, employ learned perſons to compile a ſyſtem of law, that the law may be *generally* underſtood, and juſtice be obſerved, or to compoſe a poem for his gratification, or a work of any other kind, and give wealth to them for their maintenance, or as a token of reſpect; then alſo, if he make not ſeparate gifts to each, this ſame rule is applicable. Thus,

if

if the labour be of two kinds, the gifts ſhall be diſtributed in ſingle and double ſhares; if it be of three or more kinds, the diſtribution ſhould be made accordingly, in the mode formerly mentioned. It ſhould not be argued, that the ſhares may be regulated as in the performance of ſolemn rites; for in the preſent inſtance there are no *Brahmà*, *Brâhmanáchch'hanſi*, and ſo forth, to give occaſion for ſuch a regulation of the ſhares.

ANOTHER incidental obſervation may be made: if the work be jointly compoſed by a teacher and pupil, a maſter and ſervant, or the like, there is no ſuch rule of diſtribution. If the teacher, or other principal perſon, have promiſed any thing, even that ſhall be given; otherwiſe, it is optional. The teacher and the maſter, not the pupil or ſervant, ſhall ſhare what is given as a recompenſe by the king or other *employer*. So likewiſe, if any loſs ariſe. *But* if the loſs happen by the fault of the pupil or ſervant, the blame is imputable to that pupil or ſervant: if the book fail by his fault, it is his loſs. If the teacher die or be diſabled, what was receivable by him, may be taken by his heirs; and they ſhould complete the work themſelves, or by means of others. But ſhould there be no ſpecial agreement concerning an employment for a long ſpace of time, the work and the gain may be regulated at the pleaſure of the king, or other *employer*. Alſo, ſhould the pupil die, the rule is ſimilar; but here the option, *allowed* to the teacher, or his heir, is included in the caſe noticed of the king's option. The ſame ſhould be underſtood where many join in compoſing a work, according to their reſpective ſuperiority. Theſe and other rules may be inferred from reaſoning, by a ſimple exertion of intellect.

SO, in joint conqueſt, and in joint purchaſes, whatever ſhare a partner has in the principal ſtock, ſuch ſhall be his ſhare of what is acquired: and the exertions for the preſervation of the ſtock, and ſo forth, ſhould be proportioned to the ſhares in the principal ſtock. Similar deciſions ſhould be given in the caſe of barter in partnerſhip, and alſo in other caſes.

CHAPTER

CHAPTER IV.

ON SUBTRACTION OF WHAT HAS BEEN GIVEN.

SECTION I.

ON UNALIENABLE PROPERTY.

I.

VRĬHASPATI:—THIS law, reſpecting concerns among partners, has been fully declared: *the law, concerning* what may, or may not, be given, and what is, or is not, a valid gift, ſhall be next propounded.

CONCERNS among partners have been unfolded; undue gifts and the reſt are next "unfolded." The conſtruction of the ſentence reſumes this term from the context, becauſe the ſenſe requires it.

II.

NA'REDA:—WHEN a man deſires to recover a thing, which was not duly given, it is called ſubtraction of what has been given, *and this is* a title of adminiſtrative juſtice.

2. IN civil affairs, the law of gift is four fold; what may, or may not, be given, and what is, or is not, a valid gift,

3. Things, which may not be given, are eight; what may be given, is declared to be of one ſort *only:* know valid gifts to be of ſeven ſorts; void gifts aſſume ſixteen forms.

THE man, who, not having duly given a chattel, wiſhes to retract the donation, is called a recanter of gift, and *this* is a title of law: he contends for withdrawing what has been given. Thus ſimple men interpret the word from its etymology: it intends a man, who pleads, that he has not duly given what the other party affirms to have been duly given. Others read, "what a man &c. *(yat* inſtead of *yah)*." Some take the word "it" indeclinably; for the dictionary of AMERA explains the correlatives, "what, that; why, therefore:" becauſe he deſires *to withdraw the gift*, therefore the title of law is ſubtraction of what has been given. It follows, that the title of law refers to the wiſh *of retracting the gift*, or to the gift retracted.

THE term uſed by MENU (Chapter I, v. II 1) denotes payment *or delivery*; non-delivery of what has been given is retraction of it. Delivery here intends a perfect gift: its converſe is an imperfect gift, and is a title of law, namely ſubtraction of what has been given. Given denotes the intention *of the giver expreſſed in this form*, "let this be thine:" *the word, interpreted* ſubtraction, may ſignify imperfect *or undue* donation; where that exiſts, there is imperfection of gift. In the text of NA'REDA, "*on what ground*," and "*that being aſcertained in his gift*," may be ſupplied: "on what ground a man deſires to retract a donation, that being aſcertained in his gift &c:" for it has the ſame import with the text of MENU: the imperfection of the gift cancels it; accordingly the text expreſſes "not duly given." There is no difficulty in including under this title a man who deſired to retract a gift which is *afterwards* determined to have been duly given, ſince a ſuit *at law* exiſts previous *to that deciſion*: but on the conſtruction propoſed by ſimple men, "not duly" would be unmeaning. Thus ſome interpret the text. But CULLU'CABHATTA explains the term employed in the text, "withdrawing or taking back." According to his interpretation, "*recovery deſired*" muſt be ſupplied in the text of NA'REDA: "when a man deſires to recover what has been given, the recovery deſired by him is retraction of what has been given, and this is a title of adminiſtrative juſtice."

THE gift may be imperfect becauſe the thing is unalienable, or becauſe it is given by a perſon not entitled to give it. Thus the gift may be imperfect, becauſe the chattel is unalienable, or becauſe it is improperly given, or be-

cauſe

cauſe it is given to a wrong perſon, or without the aſſent of the father and ſo forth, or at a time when the dooor is defiled. So MISRA. This will be explained in another place, it is here mentioned incidentally.

" IN civil affairs &c." (II 2): the rule to be eſtabliſhed, that gifts, made by a man afflicted with diſeaſe and the like, are void, regards civil gifts, not donations for a religious purpoſe. This title of law does not extend to a gift made for a religious purpoſe: the donation is valid, if it be made by the owner *of the thing*.

III.

CA'TYA'YANA:—WHAT a man has promiſed, in health or in ſickneſs, for a religious purpoſe, muſt be given; and, if he die without giving it, his ſon ſhall doubtleſs be compelled to deliver it.

RAGHUNANDANA and other authors expound this text, " what a man, even afflicted by ſickneſs, has promiſed to give, muſt, if he die, be given by his ſon." It is not proper to ſay, that what he has promiſed, muſt neceſſarily be delivered, but the gift is not valid. The rule muſt be underſtood of other caſes as well as of ſickneſs; for the reaſon of the law is equally applicable.

" THE law of gift is four fold;" literally the path of donation (II 2). The ways of arriving at, or receding from, the annulling of property, and thereby effecting donation, are four. Thus, by the way of void gifts, the act recedes therefrom; by the way of valid gifts, it arrives thereat: the reſt will be evident in courſe. The wiſh of retracting an invalid gift takes effect; the wiſh of withdrawing a valid gift is fruitleſs. This is the whole rule concerning ſubtraction of what has been given; for an invalid gift only may be withdrawn.

WHEREVER the gift is invalid, *the property* is actually recovered: how then does the man " wiſh" to recover it? Where effects are poſſeſſed by another under the ſemblance of a gift, a doubt ariſing whether they ſhall,

or

or ſhall not, be recovered, the ſage directs, that they ſhall be recovered if it be aſcertained to be *merely* the ſemblance of a gift; but ſhall not be recovered, if that be not aſcertained. An invalid gift *is mentioned* to determine, that the ſuppoſed donation is void.

SHOULD not gifts be here ſaid to be of two ſorts, valid and invalid? why are they denominated from what may, or may not, be given; *for* there is no proper diſtinction, in treating of this ſubject, between what may and may not be given, and what is and is not a valid gift? Simple men reply, both are noticed incidentally. Both are mentioned to denote, that *the* gift of a ſon or a wife *is imperfect*, *becauſe they* ſhould not be given. For what purpoſe *is it* ſaid, that the gift of what may not be given is imperfect? The anſwer is, it appears, that a fine is incurred by ſuch a gift. Thoſe things, in the giving of which there is ſin, ſhould not be given: and that ſin is not expiable by penance alone; for, were it ſo, ſuch gifts ſhould be diſcuſſed under the title of penance *and expiation*: being noticed under the head of judicial procedure, it appears, that the giver of what ſhould not be given, ſhall be amerced. Thus ſome *expound the law*: their opinion will hereafter be conſidered.

VRĬHASPATI has not mentioned the term "ſubtraction of what has been given;" but mentions the four fold *diſtinction* of what may, or may not be, given, and what is, and is not, a valid gift: the rule muſt be deduced from the acceptation of the terms, 'what may not be given &c.'

THE eight things, which may not be given, are thus enumerated.

IV.

NA'REDA:—WHAT is bailed for delivery, what is lent for uſe, a pledge, joint-property, a depoſit, a ſon, a wife, and the whole eſtate of a man who has iſſue living,

2. The ſages have declared unalienable even by a man oppreſſed with grievous calamities; and *of courſe* what has been promiſed to another.

WHAT

WHAT is bailed for the uſe of another *(anuábita)* is a diſtinct kind of bailment, explained in the chapter on depoſits. It is mentioned to ſhow, that it is comprehended under the general term of depoſit, by the ſame rule, by which one name of kine may denote cattle of that ſort, and a ſynonymous term in the ſame ſentence may intend cows only: conſequently, there is nothing inconſiſtent with the number of eight *unalienable things*.

MAY it not be ſaid, that pledge and loans for uſe ſhould not be repeated; for they are nearly allied to depoſit? Some diſtinction may be admitted; becauſe a pledge is connected with debt; and a loan for uſe gives dominion over the chattel to one, who is not the owner: but bailment for delivery is a mere repetition, for the owner's dominion *over the chattel ſubſiſts in full force*; a thing depoſited through the intervention of another, a chattel bailed by an abſent man, and the like, are depoſits generally, for they are only diſtinguiſhed by minute differences.

MISRA reconciles the number by joining the words ſon and wife into one compound term; "a wife with a ſon, mentioned conjointly:" conſequently, there is nothing inconſiſtent with the eight fold diſtinction premiſed. But the text ſhows, that a wife and a ſon may not be given, as the expreſſion, "the father goes with his ſon," denotes, that both go.

V.

VRĬHASPATI:— THE prohibition of giving away is declared to be eight fold: a man ſhall not give joint-property, nor his ſon, nor his wife, *without their aſſent in extreme neceſſity*, nor a pledge, nor all his wealth *if he have iſſue living*, nor a depoſit, nor a thing borrowed for uſe, nor what he has promiſed to another.

IN this text bailments for delivery and the like ſhould be underſtood as comprehended under the term depoſit.

IS it not ſuperfluous to declare, that depoſits and the like may not be given; for, in their nature, they are unalienable, becauſe they are the pro-

perty of another: else it should also be said, that the property of another, actually enjoyed by the owner, may not be given by a stranger? Consider it as mentioned for the sake of an amercement imposed on him, who gives away deposits and the like. Is there no punishment for him, who gives away the property of a stranger under other circumstances, that deposits and the like should be *specially* declared unalienable? Since, under other circumstances, the property of a stranger cannot be given away without theft, the giver shall be punished as a thief: but, considering that deposits and the like, being actually in the depositary's power, might be given away *without suspicion of theft*, the beneficent sage has declared them unalienable.

Others remark, that VIJNYA'NE'SWARA admits the creditor's property in a pledge; and the property of the borrower, in a thing borrowed for use and the like, may also be admitted: but the right of the owner is not annulled; *it subsists* like the concurrent property of husband and wife: therefore the borrower, but not a stranger, may, with the assent of the owner, aliene at pleasure a chattel borrowed for use. Thus, on the grounds of such a subordinate property, a gift or other alienation might be made; but the sage prohibits the gift (IV 1), because that property is subordinate.

A gift of deposits and the like, made by mistake, is not valid (Chapter II, v. XXVII). Therefore deposits and the like, given away by mistake, may be recovered. With a view to this, MISRA has said, "the gift may be imperfect, because the chattel may have been unalienable." Others affirm, that creditors and the rest may create, by gift or the like, an interest equal *and similar* to their own.

"Joint property" (IV 1) is explained in the *Retnácara* and *Chintámeni*, what belongs to more than one owner. Therefore the sense is, that one brother shall not, without the assent of the rest, give away undivided wealth held as the property of several brothers.

Shall he not give away the whole of the joint-property? or shall he

not

not give away the amount of his own ſhare? On the opinion of JI'MU'TA-VAHANA delivered in his gloſs on the text of VYA'SA (Chapter II, v. VI); "becauſe the family would be injured by a ſale, gift, or other *alienation*, effected by a diſtreſſed coheir as part-owner *of joint-property*," ſome remark, that, if it were intended to forbid the ſale or gift of the whole, the author would have ſaid, "they would be deprived of the means of ſubſiſtence if a gift or ſale were made;" thereby forbidding *the alienation of the whole*. There is no difference, whether the ſale or gift of the whole wealth be made by a parcener diſtreſſed or not diſtreſſed; conſequently, it would be vain to contend for a partition or the like, with a diſtreſſed man, who had ſold the amount of his own ſhare *of the joint-property*: to obviate this conſequence, even a parcener's ſale or gift of his own ſhare without the aſſent of the coheirs is forbidden. Such is the principle *of the rule*: and here, from this prohibition of the ſale or gift of his own ſhare without the aſſent of the coheirs, it appears, that the parcener ſhall be puniſhed if he do ſo; for the texts of NA'REDA and others, under the head of judicial procedure, ſhow, that joint-property may not be given away. At preſent parceners do not make gifts or ſales of undivided land or other property, without the aſſent of the coheirs; each ſays, "how ſhould I ſell it? this property is not divided." Such is the general cuſtom in ſome countries. But certain lawyers hold, that, if a parcener give or ſell his own ſhare, the king does not impoſe fines on trifling occaſions; or the parceners, from indolence, or conſidering it as fruitleſs, do not inform the king: in this view *of the matter*, cuſtom permits parceners to give or ſell the amount of their own ſhares. If the maintenance of his family cannot be *provided by a parcener* without the ſale of that property, and his wealthy coheir neither make a partition, nor conſent to the ſale, what ſhall be done in that caſe? The king, they ſay, on the application of the perſon who wiſhes to ſell *his ſhare*, ſhould give attention to the matter. But here it muſt be underſtood, that joint-property is unalienable without the aſſent of the coheirs: however, ſhould the gift or ſale be actually made, it is valid; for the following text may relate to the amount of the reſpective portions *of joint-property*, as well as to divided ſhares; and the will of the owner being a ſufficient cauſe of veſting property in another, the parcener may not be able to bear the delay of partition, or of obtaining the aſſent of his coheir.

VI.

VI.

NA'REDA:—IF they ſeverally give or ſell their own *undivided* ſhares, they may do what they pleaſe with their property of all ſorts; for, ſurely, they have dominion over their own.

IT ſhould not be objected, that the aſſent of coheirs ſhould be eſtabliſhed, under the authority of the text, as a neceſſary aſſociation for the diſpoſal of another's right in undivided immoveable property: thus, without the union of all the *requiſite* cauſes, the effect of conferring property on another does not take place. Since the text may be pertinent in the ſenſe abovementioned, it is wrong to impoſe the difficulty of eſtabliſhing ſuch an aſſociation. Herein SRI'CRĬSHNA TERCA'LANCA'RA concurs. But if a parcener, without the aſſent of his coheirs, give the whole joint-property, the gift is null; for the joint-property of all cannot be deveſted by the act of one.

IT is queſtioned whether his own property be, or be not, annulled by the act of a ſingle parcener. It ſhould not be ſaid, that his own property is not annulled, becauſe the gift, being improperly made, is in its own nature imperfect; and is void as the act of a man partly deſtitute of ownerſhip. There is nothing to prevent the annulling of *his own* property, ſince the gift, which he himſelf makes with the intention of annulling the rights of all the parceners in that chattel, is the act of an owner, of whom property is predicable. Conſequently the ownerſhip of the giver appears in this inſtance to be alienable: but the ownerſhip of the reſt ſubſiſts *in full force*. The meaning of ancient authors, who hold a gift of joint-property to be void, is the ſame. But a parcener's gift of his own ſhare is valid. All the brothers have each their reſpective predicable property in all the effects.

IT ſhould not be objected, that, when the father dies, if one common property in the ſame thing be veſted in ſeveral brothers; and, ſhould one of theſe die, if the right of all the parceners be annulled and another property be veſted in the *ſurviving* brothers together with the ſon of the *deceaſed* brother; it is troubleſome repeatedly to eſtabliſh joint-property veſting in many perſons: therefore the property in the effects veſts in the perſons ſeverally.

After

After the death of a brother, it being necessary to establish a single property vesting in his son after the annulling of his single property, we find, *say these lawyers*, no greater difficulty in establishiog a property not dissimilar predicated of many persons. It must be therefore established, that the ownership of all is, or is not, annulled by the act of one; nor, that the giver's right is annulled, and that the property of the rest subsists. These lawyers therefore think, that the gift of one may be valid as the gift of all.

To that argument there is this objection: it suits the opinion, in which property is referred to things; but it does not accord with the sentiments of the *Naiyáyicas*, who dissent from that opinion, and refer property to persons: thus it is difficult to establish, that the ownership of all the brothers is annulled upon the death of one; and no quality, except conjunction and the like, is acknowledged to be inherent in two individuals *at the same time*. Or admitting single property, still there is no difficulty. Thus, after the right of all the brothers has been annulled on the death of one, a single property arises predicated of the surviving brothers and the heir of the deceased; not a distinct property predicated of the heir alone. In the present case also, after the right of all the parceners has been annulled by gift, property arises predicated of the other parceners and the donee; for gift only creates a property similar to that held by the owner, *who makes the gift*.

Is it sale *or gift* without ownership? What objection is there to its being *considered as* a true sale *or gift* without owoership? for it might be supposed, that he shall be punished as a thief for such a gift or sale; yet that *punishment* is not *inflicted* in this instance, because the law has forbidden it (Book V, v. CCCLXXVII 4): in the case of possible theft only, that punishment is consistent with common sense. But some hold, that it is not sale without ownership, because the parceoer is oot a person different from the owner of the chattel.

Then what shall be the punishment? The penalty directed for the gift of what is unalienable. That penalty will be quoted from Ji'mu'ta va'hana and others, as expressly declared by Menu. This should be well examined.

It muſt be noticed, that, if a parcener, without the aſſent of his coheirs, give or ſell, to any perſon, ſome one chattel out of the whole undivided property; at a ſubſequent time, when partition is undertaken, that chattel ſhould be included in his ſhare.

Shall all the parceners divide the value of the effects *alienated*; or ſhall the other parceners receive back their portions of thoſe effects, and the *donee or* buyer recover the price of their ſhares from the *donor or* ſeller? If the other parceners conſent, that the effects aliened ſhould become a part of his ſhare in the joint-ſtock, then it may be included in his allotment: but, if they do not conſent to that adjuſtment, nor to receive their ſhares of the value, they may recover their ſhares of the effects. Otherwiſe they may *ſeverally* inſiſt "this chattel muſt be received by me, it ſhall not be given to that brother; diſtribution ſhall be made by lot." But, in fact, there can be no diſtribution by lot in this inſtance; for the ſeller, whom that diſtribution would concern, is no longer an owner. It cannot be ſaid, thoſe effects are of courſe included in the ſeller's ſhare. All the brothers having ownerſhip in thoſe effects, that ownerſhip is not annulled.

Should it not be ſaid, that, according to the opinion of Ji'mu'ta-va'hana, who contends for diſperſed property *veſting ſeverally in the coparceners*, ſale, as well as diſtribution by lot, determines the property *in particular chattels*: otherwiſe, a parcener, ſelling any chattel and conſuming *the produce of the ſale*, would be guilty of embezzling the property of another? It cannot be affirmed, that there is no difficulty, becauſe Ca'tya'yana directs, that his offence ſhall be *patiently* borne (Book V. v. CCCLXXVII 4). Still, in the apprehenſion of ſin, the penance directed for caſes of doubt would be requiſite; and he, who conſumes much, would undoubtedly be a ſinner. A diſſimilar property is not created, but a right proportionate to the ſhare *of the donor or vender*: and if it be affirmed, that he, who ſells for his ſubſiſtence that which he occupies, is proved to have had property therein, it follows, that a ſingle ownerſhip exiſts in effects ſold for ſubſiſtence, and the other parceners would not be entitled to a ſhare of the effects ſo aliened. *This queſtion* is thus anſwered; it is a maxim, that penances are ſimilar to puniſhment: exemption from penance is therefore implied in

exemption

exemption from puniſhment. The laws, which ordain partition by lot and otherwiſe, aſcertain property; but occupancy and the like does not aſcertain it. If the property be doubtful, all the parceners are not entitled to ſhares; but in this inſtance, if a ſale be made for *neceſſary* conſumption; the ſeller ſhall not be puniſhed: otherwiſe, he may be chaſtized. It ſhould not be objected, that the parceners could not receive equal ſhares; becauſe the property cannot be determined by the deciſion of arbitrators, without the mutual aſſent of the contending parties *to the appointment of them*; and diſtribution by lot has been already ſet aſide. In this caſe, no diſtribution by lot does take place; but the other parceners do not abandon their ſhares. The arbitrators, to whom their complaint of the parcener's illegal act is referred, rejecting the vender's plea, adjudge equal ſhares to all the parceners: and the notion of a property, which requires ſpecifick mutual aſſent *to authorize alienation*, ſuppoſes a *common* right veſting in all the parceners, like their property in a ſingle ſlave or the like. For this purpoſe the gift or alienation of undivided effects, without the aſſent of coheirs, is prohibited: a parcener is forbidden to give his own ſhare generally, without ſpecifying particular chattels, in this form; " I give you my ſhare;" for then the donee may be admitted, like a parcener, to a diſtribution by lot: but, even in that caſe, the aſſent of coheirs is required for the alienation of immoveable property (XIX 5).

JOINT-PROPERTY is wealth belonging to more than one owner. MISRA ſays, ' the gift is invalid, becauſe a man has not full dominion over joint-property, a wife, or a ſon: and the want of dominion, *in the other inſtance*, is *deduced* from the *ſame* reaſoning, *which proves it in the caſe* of joint-property.' By " the ſame reaſoning " he means, that the ownerſhip of one cannot be annulled by another. From MISRA's expoſition it is inferred, that a parcener's gift of his own ſhare of undivided property is void. But, to reconcile the two opinions of *different* authors, we adopt the ſenſe inferible by reaſoning, and ſay; a gift of the whole joint-property is void, not a gift of the parcener's own ſhare. Thus the donor cannot, at his own choice, annul the ownerſhip of others; *but* he is not debarred from aliening his own ſingle right in the joint property: for ſuch acts by partners in trade are often ſeen in *common* prac-

tice. This may be ſtated as the opinion of VA'CHESPATI BHATTA'CHA'RYA, and VIJNYA'NE'SWARA. Therefore, the gift is valid as far as the donor's ſhare is concerned; but he ſhall be puniſhed, and muſt perform penance. Such is the rule ordained concerning gift, or other *alienation*, of what may not be given. 'That a thing may not be given' denotes, that the gift is attended with ſin: for this form of ſpeech bears the ſenſe of the imperative. It does not denote, that the gift is a void act: were it ſo, it would not differ from a void donation; and full dominion would not be noticed under this title of 'what may not be given.' If it be ſaid, this title is intended to ſhow puniſhment *for ſuch gifts*; it is anſwered, this form of prohibition implying offence, the offender ſhould be puniſhed. Thus the gift of things, which are enumerated among thoſe which may not be given, is puniſhable; gifts, enumerated among thoſe which are void, are utterly null; and thoſe noticed under both heads are both *void and puniſhable*: as the gift of a depoſit or the like, of another's ſhare in undivided property, and ſo forth.

IN regard to a ſon or a wife, MISRA ſays, that the gift is void, for want of full dominion. It appears, under the authority of the text, that there is no full dominion over a ſon and a wife, who do not conſent to the ſale. Here this objection *occurs*: if a father, or huſband, have power to give away a ſon, or wife, it ſhould appear that they have the dominion of owners over them; and having ownerſhip, how can their gift be void, being made by perſons neither infane, nor otherwiſe incapable? and theſe are not enumerated among void gifts. Conſequently the donation, even without their aſſent, is valid; but the donor ſhall be puniſhed, for they are found in the number of unalienable things *and perſons*. In the text of CA'TYA'YANA (VII) the gift or ſale of a ſon or wife, without the aſſent of the parties intereſted, and without extreme neceſſity, is forbidden: it is not ſaid, that the gift, or ſale, is void.

VII.

CA'TYA'YANA:—A WIFE or a ſon, or the whole of a man's eſtate, ſhall not be given away or ſold without the aſſent of the perſons intereſted; he muſt keep them himſelf,

2. But in extreme neceſſity, he may give or ſell them *with their aſſent;* otherwiſe, he muſt attempt no ſuch thing: this has been ſettled in codes of law.

" WITHOUT *the* aſſent *of the perſons intereſted,*" (that is, of the ſon, wife, kinſmen and ſo forth,) theſe muſt not be ſold nor given away.* If he neither give nor ſell them, where ſhall he place them? The ſage replies, " he muſt keep them himſelf." MISRA obſerves, that, if *the perſons intereſted* do not aſſent *to the gift or ſale,* theſe three *(the ſon, wife, and the whole of a man's eſtate)* muſt be retained by himſelf. Even with their aſſent, they can neither be ſold nor given away, unleſs in extreme diſtreſs (VII 2). It is wrong to affirm, that, after forbidding the gift or ſale of a ſon and the reſt without *the* aſſent *of the perſons intereſted,* the admiſſion of ſuch a gift or ſale in extreme diſtreſs ſhows, that *the gift or ſale* may be made in ſuch circumſtances even without *the* aſſent *of the perſons intereſted.* NA'REDA, forbidding *ſuch a* gift or ſale, even in extreme diſtreſs (IV), would contradict CA'TYA'YANA. Therefore, in the utmoſt diſtreſs, a ſon and the reſt may be given away, with *the* aſſent *of the perſons intereſted;* but even in ſuch circumſtances, the gift may not be made without their aſſent. Such is the demonſtrated rule.

A SON is alſo given for the purpoſe of adoption; *this being done* as *an act of* duty to relieve the adopter's diſtreſs ariſing from the want of male iſſue, no penalty is incurred: the aſſent *required* is *found in* the want of oppoſition; for it is a rule, that not to forbid is to aſſent. Therefore the gift of a ſon under the age of five years may be valid; and it appears, that a donation may have force even without *the* aſſent *of the perſons intereſted.* Since the gift of an unſuitable ſon, even though he do not aſſent, is valid, therefore the father may have full power to give away *his ſon;* and, from parity of reaſoning, the ſame may be underſtood in regard to the gift of a wife. It ſhould not be objected, that, under the authority of the text, the gift of a ſon or wife is valid, without their aſſent, if they do not oppoſe the donation; but in the gift of an infant there can be no oppoſition *made by him.* It is troubleſome to prove want of oppoſition *an* aſſociated *cauſe* for the validity of *an act* deveſting property, which is an effect of acts, to which the aſſent of the

* I omit a grammatical diſquiſition juſtifying the uſe of the maſculine gender in the inſtance of a participle governed by unconnected words of the three genders.

proceeds from his father and mother, as an effect from its cause: both parents have power *for just reasons* to give, to sell, or to desert him; but let no man give or accept an only son, since he must remain to raise up a progeny for *the obsequies of* ancestors. Nor let a woman give, or accept a son, unless with the assent of her lord.*

"Nor let a woman give or accept a son:" give, having a secondary sense without losing its literal meaning, comprehends sale and the like.

CHANDE'SWARA.

CONSEQUENTLY, by parity of reasoning, "may not be given," in the text of NA'REDA, denotes also that they may not be sold: and by *the same* parity of reasoning, the term cannot be taken in the secondary sense of sale only, when thus employed in a single text.

"BOTH parents have power &c." Have the father and mother power jointly *to give, to sell, or to desert a son*; or *have they that power* severally? Not the first: a gift made by the husband alone, after the death of his wife, would be void; but this is not intended, for, by declaring that a wife has not power to give *a son*, it is implied that the husband has that power. *If the second construction be deemed admissible, still the husband's previous* assent is required for a gift made by a widow.

A GIFT made by the husband, while the wife is living, without her assent, to a person requesting it for the adoption of a son given, would be valid. This cannot be admitted. Were it so, that given son would not be forsaken by his mother: though a woman be dependent, the alienation of female property, or of *a mother's* rights over her son, by the gift of the husband *alone*, is not valid in law or reason. It is said, the word "or," which occurs in many texts concerning sons given, shows the right both of the father and mother, severally to give a son: but there is this difference; "if the father be living, with his assent; if he be not living, *without it.*" And from this exposition of CHANDE'SWARA, it is established, that *parents* have that

* See the remainder of the text in Book V. (v. CCLXXIII).

right

right severally: but the filiation to another person must be admitted without desertion of the mother. This will be more fully discussed in book *the fifth* on inheritance, under the title of sons given.

MISRA affirms, that "a woman cannot accept a son even with the assent of her lord, because she is precluded from the oblation to fire with holy words from the *Véda*, which is a part of *the rites on* the acceptance of a son, as will be mentioned under the title of sons given." From this opinion VA'CHESPATI BHATTA'CHA'RYA and others dissent; for it is not said by any author, that the principal object cannot be attained, if a *secondary* part *of the rites* be prevented: women and *Súdras*, though precluded from sacrifice, are observed to be qualified for dismissing a bull on *solemn* occasions. If adoption be null without an oblation to fire with holy words from the *Véda*, still nothing prevents the validity of the acceptance: *and* by that acceptance, according to MISRA's opinion, *the child* would fall under the description of a slave.

WHAT some remark, that the wife has no right to give a son after the death of her lord without his previous assent, may be questioned; for, without an *express* ordinance, a woman's right, inferible from the reason of the law, to annul her own property after the death of her husband, without authority from him, cannot be barred. It may be examined, under the title of inheritance, whether the child be a son given *by his parent*, or a son self-given. Some explain it to be MISRA's intention, referring the text of VA'SISHT'HA to the son's assent, and, in his gloss on that text, discussing the acceptance of a son given *for adoption*, to require the son's assent to the gift, even in the case of a son so adopted. This should be examined: the filiation of a son given under the age of five years is legally valid; his then utterance of consent would be taught like *the speech of* a parrot or the like; there is no authority for admitting, in judicial procedure, words spoken by an infant under the age fit for business: therefore, in ordaining that "both parents have power to give, to sell, or to desert a son," his assent is required for the gift or sale, if he be acquainted with affairs, *or adult in law*; and the acceptance of a son given *for adoption* is discussed incidentally, because the text may relate to that *subject*.

IX.

IX.

DACSHA:—JOINT-PROPERTY, depoſits for uſe, bailments in the form called *nyáſa*, pledges, a wife, her property, depoſits for delivery, bailments *in general*, and the whole of a man's eſtate if he have iſſue alive,

2. Are things, which the learned have declared unalienable even in times of diſtreſs: the man, who gives them away, is a fool; and muſt expiate *the ſin* by penance.

HERE nine things are declared unalienable; but a ſon is not mentioned: including a ſon, ten things *and perſons* may not be given. VRĬHASPATI (V) declares the prohibition of giving away to be eight fold: though depoſits may be conſidered as comprehended in his text under the term "*nyáſa*," ſtill female property is not included in that text; and what is promiſed, not included by NA'REDA *in the number of eight unalienable things*, is included in that number by VRĬHASPATI. On this mutual contradiction CHANDE'SWARA remarks: "it is not implied, that the enumeration of unalienable things, as delivered by other ſages, is curtailed by what each himſelf declares." Conſequently, where nine things are *declared* unalienable, it is true of eight; and if ten, or eleven things be ſo, the ſame is affirmed of nine, or eight.

THE female property of wives, like the property of a ſtranger, may not be given; for there is a want of ownerſhip.

X.

CATYA'YANA:—NEITHER the huſband, nor the ſon, nor the father, nor the brothers, have power to uſe or to aliene the legal property of women,

2. If any one of them ſhall conſume the property of a woman againſt her conſent, he ſhall be compelled to pay intereſt *to her*, and ſhall alſo pay a fine *to the king*. *

* Cited in Book I, v. LXXIII, and again in Book V, Chap. IX.

" CONSUME " is here employed in the comprehenſive ſenſe of ſell, *or aliene* &c.

" IF there be iſſue alive " (IX 1): if there be a ſon, grandſon, or great grandſon, who have equal dominion *over the property*, it is ordained by NA'REDA and many other ſages, that the whole of a man's eſtate may not be given away: and if any perſon, though he have iſſue living, do give away his whole eſtate, he ſhall be fined. This is evident; and penance is alſo expreſsly directed by DACSHA. On the doubt whether the gift be valid, notwithſtanding the amercement and penance impoſed, MISRA ſays, " the gift of a pledge, a depoſit and a bailment for uſe, is prevented by the want of property; and *the gift* of a ſon, a wife, a man's whole eſtate, and what has been promiſed *to another, is barred* by the authority of the text:" according to his opinion, the gift is not valid.

IT ſhould not be objected, that by ſaying, " gift is prevented," it is not meant, that ſuch a gift is utterly null, but that it ſhould not be made. The gift is invalid becauſe the donor has not independent power over joint-property, a ſon, or a wife. The want of independent power *to diſpoſe* of joint-property *is founded* on reaſoning; *the want of power to give away* a ſon, or a wife, againſt their conſent, *is founded* on the authority of the text: and MISRA ſubſequently ſays, that " *the gift of* a man's whole eſtate if he have iſſue living, and any perſon's *gift* of what he has promiſed to *another, are invalid* under the authority of the text:" for it is proper to refer his words to the invalidity of the gift, ſince the form of expreſſion implies a reference to what has preceded. Conſequently, it is an eſtabliſhed rule, according to MISRA, that a gift of his whole eſtate by a man, who has iſſue living, is invalid without the aſſent of the perſons intereſted. But this ſuppoſes gifts for civil, not for religious, uſes; ſince it is recorded in *Purânas* and other works, that HERIS'CHANDRA and others gave their whole property for religious purpoſes; and NA'REDA limits the preſent title to civil affairs (II 2).

IF a man, reſerving a ſingle ſhell, give away all *the remainder of* his property, is the gift valid? It is ſaid, even in this caſe, the gift is not valid; for the prohibition of giving away the whole eſtate is founded on the conſequent

diſtreſs

diſtreſs of the family from want of ſubſiſtence. Therefore, after ſetting apart a ſufficiency for the ſubſiſteoce of the family, a gift of the remainder is valid; but a gift of the whole eſtate, reſerving only a ſhell or the like, is not valid, as will be meotioned in explaining a text of VRĬHASPATI (XVIII 1): and JĪMŪTA-VA'HANA ſays, "a gift or other *alienation* of the whole eſtate is forbidden on account of the ſubſiſtence of the family; for the family muſt neceſſarily be maintained."

WHAT is a ſufficiency for the maintenance of the family? Not ſo much as is conſumed in one day by the actual members of it; for that would be inconſiſtent with approved uſage; and duty would be violated, ſince the family might next day be deprived of ſubſiſtence.

XI.

MENU:—THE ample ſupport of thoſe, who are entitled to maintenance, is rewarded with *bliſs in* heaven; but hell is the portion of that man, whoſe *family* is afflicted with pain by his neglect: therefore let him maintain his family with the utmoſt care.

THIS text forbidding the family to be left to pain *and diſtreſs*, the prohibition would be ill obſerved by maintaining them for one day only; the prohibition is obſerved by maintaioing them for life.

THEN, any how eſtimating the duration of life, and ſetting apart a ſufficiency for their maintenance during that period, a man may give away the remainder of his immoveable property and the like. This is not conſiſtent with common ſenſe; and NA'REDA declares it neceſſary to preſerve wealth.

XII.

NA'REDA:—EVEN they, who are born, or yet unborn, and they who exiſt in the womb, require funds for ſubſiſtence; the deprivation of the means of ſubſiſtence is reprehended.

" FUNDS for ſubſiſtence;" *means of living.* This is ſuppoſed by JĪMŪTA-VA'HANA

VA'HANA to be *meant of* wealth inherited from anceſtors ; and immoveables conſtitute the beſt civil property : therefore the term is uſed in its acceptation of wealth generally. Reſerving a ſufficiency for conſumption until other moveable property be obtained, a man may give away his moveable effects. This is the whole meaning.

SOME hold it eſtabliſhed on the reaſon of law, that, ſetting apart a ſufficiency to maintain, for a long period, the preſent members of his family, and their families, as determined by five prudent perſons, a man may give away his immoveable property and the exceſs of his moveable property above what is required for ſubſiſtence until other moveable property be obtained, as alſo determined by five prudent perſons. This ſhould be well examined ; for neither *opinion is expreſsly delivered by any* author : but the laſt *opinion may* be deemed conſiſtent with ſettled uſage.

JI'MÚTA-VA'HANA does not admit the invalidity of a gift under theſe circumſtances.

that, which, in *the inſtance of* other effects, denotes a right of diſpoſing of them at pleaſure:" and the fact cannot be altered even by a hundred *texts*: therefore, the validity of a gift of land, whether inherited from anceſtors, or acquired by *the donor* himſelf, being admitted becauſe the incumbent has ownerſhip, the ſame would be eſtabliſhed in regard even to the whole of a man's eſtate; for the ownerſhip is not different.

It ſhould not be objected, that, if the validity of the gift, *as deduced* from ownerſhip alone, cannot be barred even by a hundred texts, then gifts, which Nareda declares void (LIII), would be valid: but if the nullity of this gift be eſtabliſhed from the ſenſe of the words "not given," the invalidity of that gift may be eſtabliſhed from the ſenſe of the words "what may not be given;" and the expreſſion, uſed in the text of Ya'jnyawalcya, ſignifying diſqualification, the invalidity of the gift may be eſtabliſhed, as it is a gift by a perſon not entitled *to alienate ſuch property*: in regard to what has deſcended from an anceſtor, Vrĭhaspati will be quoted for the validity of the gift, if made with the aſſent of the coheirs (XVIII 4). It is ordained by Ya'jnyawalcya and Na'reda (LVIII and LIV), that, in certain caſes, the act is invalid or null; and it is proper to eſtabliſh the invalidity of ſuch gifts: but the term, "what may not be given," ſhows a moral offence; elſe, "what may and may not be given" would not be ſeparately propounded. The text of Vrĭhaspati ſignifies, that the gift has validity, becauſe being made by one not ſuſpected of being influenced by luſt or the like, it is excluded from the number of void gifts; and becauſe there is no objection to its validity, ſince it is not the act of a perſon of unſound mind.

Be it any how in regard to the whole of a man's eſtate acquired by himſelf; but the gift of what has deſcended from an anceſtor, by a man who has a ſon *living*, is void, becauſe he has not independent power *over that property*; for Na'reda declares null a gift made by one, who is not *an* independent *owner*; and the law, quoted by Va'chespati bhatta'charya and Raghunandana, declares a father not to be independent.

XV.

Smriti:—While the eldeſt brother lives, the reſt are not

 indepen-

independent; *but* seniority is founded both on virtue and on age:

2. All subjects are dependent, the king *alone* is free: a pupil is declared dependent; freedom belongs to his teacher:

3. All wives, sons, slaves, and unmarried girls are dependent: and a householder is not uncontrolled in regard to what has descended from an ancestor.

4. An infant *(śiśu)*, before his eighth year, must be considered as similar to a child in the womb; but a youth or adolescent *(pógenda)* is called a minor until he has entered his sixteenth year:

5. Afterwards, *he is considered* as acquainted with affairs, *or adult in law*, and becomes independent on the death of both parents; *but* however old, he is not deemed independent while they live.*

The inference is wrong, for these texts do not propound a dependence invalidating civil acts. The sense of the text is thus: while the eldest brother lives, (eldest in age, if all be equally virtuous, or younger in age but endued with qualities fitted for the support of the family,) the rest of the brethren should not give, sell, or alienate at pleasure, *any part of the estate*, without his consent the reason is, that, since they are maintained by his abilities, a gift or alienation, which may weaken his power to *maintain* them, would be immoral All subjects, residing with the king's assent on land owned by him, are occupied in the acquisition of wealth, with his assent they may possess land, and if it be seized by another, the king will compel him to restore it. therefore it is proper, that they should make gifts or sales with his assent. As long as a pupil resides with his teacher, he should not even eat without his order, *because it is his duty* to please his teacher. thus it is recorded in the *Mahabharata*, that Upamanyu became blind from eating leaves of asclepias, when forbidden to take

* Cited in this place without the name of the author, but the three first verses are quoted as Narada's in the third article of the second section, the subsequent texts are cited from Catyáyana in Book I

food.

food. A ſtudent ſhould not make a gift, ſale, or other alienation without his teacher's permiſſion. Unmarried daughters, and other members of the family, are dependent; they can do nothing without the conſent of the houſeholder; for the maſter of the family partakes of the virtue and vice reſulting from the acts of women. It cannot be eſtabliſhed, that a gift of their own property, by theſe perſons, is invalid without the aſſent of their reſpective ſuperiours: nor does any one ſay, that, while there is a teacher, the ſtudent's gift of his own paternal property is invalid without the aſſent of his preceptor. Similarly therefore, a gift, made by a houſeholder though he have ſons living, is valid without their aſſent; for it would be irregular to aſſign ſeveral meanings to the word dependent under the ſame head: but it is forbidden to give away, without the aſſent of the ſons, property, whether moveable or immoveable, which has deſcended from the paternal grandfather.

THE ſenſe of the laſt text (XV 5) is, that the act of a minor, under the age of ſixteen years, is invalid becauſe it is the act of an infant: after that age, his acts are valid; but it is neceſſary, that he ſhould take his father's orders. If it be ſaid, that the ſenſe of the text is this: after the age of ſixteen years a youth is independent, if his parents be dead; to prevent the *validity of a* ſale or alienation by an infant, under the age of ſixteen years, whoſe parents are dead, or by a youth, above that age, whoſe parents are living, two conditions are ſpecified; his age of ſixteen years, and the death of his parents: this interpretation is denied; for the text, mentioning that "he is *conſidered as* acquainted with affairs," ſhows him qualified for civil affairs in his ſixteenth year, and independent on the death of his parents. If "minor" and "dependent" were held the ſame, then NA'REDA would not have diſtinguiſhed a minor from a perſon who is not his own maſter (LIII 2): therefore, in that text, "not his own maſter" alſo denotes want of ownerſhip, not merely the dependence of a ſon, ſlave, or the like; elſe it might be objected, that a gift by a ſtranger, not enumerated among void gifts, would be valid. But a "perſon who is not his own maſter" has been explained by authors, "ſon, ſlave, or the like," not ſuppoſing that gifts might be made by ſtrangers, but conſidering the poſſible doubt, whether from near connexion the gift of a ſon, ſlave, or the like, be valid.

DEPENDENCE, declared in this text (XV), ſhows that conſent ſhould be taken:

taken: consequently a gift made, to the injury of the family thereby deprived of subsistence, is *nevertheless* valid, and the receiver may dispose of the effects at pleasure; but the donor commits a sin, and therefore he shall be fined, and must perform strict expiation. Such is the construction, according to JI'MUTA-VA'HANA, and maintained by many *Gauriyas:* and JI'MU'TA-VA'HANA remarks on this point, that the father has power over precious stones, and other *moveables* inherited from the grandfather; and that it does not appear immoral to give away immoveable property exceeding the subsistence of the family.

IF it be alleged, that a contract made by a person not independent is invalid; and, since a contract made by a person who is not his own master is void (LIV), since the father is not independent in regard to what has descended from the grandfather, therefore his contracts in general being invalid, surely his gift is null: a contract, made by a younger brother receiving food only, being invalid, surely his gift is null; as contracts made by such a brother are not allowed by the wife, so it is declared, that a father has not power to aliene the whole of his immoveable property (XIII): if this be alleged it must be considered, that "not independent" there means "not in his own power" (LIV); and a contract, made by a person influenced by lust or the like, is void (LIII), because in this instance, there is such a want of self dominion, and that want of self command prevents voluntary election. But that is not the case with a father in regard to wealth descended from the grandfather, for there is nothing to prevent his voluntary action. As for the instance of the invalidity of a contract made by a younger brother receiving food only, this must be understood of a case where the younger brother has consented *to subjection*, or, from minority or other cause, is incapable of proper choice. Therefore this text (XV 1) may be well explained as coinciding with that, which directs that the other brothers should live under the eldest brother. and these texts having been otherwise explained, and the gift of wealth inherited from a grandfather not being included under the title of void gifts, the text of YA'JNYAWALCYA (XIII) is considered as a *moral* prohibition of *such* gifts.

"THE gift of a man's whole estate is valid; for it is made by the own-

"er:

" er · but the donor commits a moral offence, because he observes not the " prohibition "

The *Smrityfara*

On the validity of these gifts, two opinions are set forth, the subject will be further discussed under the title of what may be given (Section II, Art. I).

In fact, men waste all their estate, and even their persons, on the *solemnities at the* birth of a son, but, from the text which expresses, " a wife is a friend in the house of the good," and from the advantage shown *in the married state*, greater affection is borne to the wife, the maintenance of her and of others being therefore requisite, how should a householder, destroying their subsistence, give his whole estate to another for civil purposes, unless he be insane or distempered? If the persons entitled to subsistence be not excessively vicious, and the householder, being mad, give away *his estate*, the donation is void, for a gift by an insane person is enumerated by Na'reda among void gifts but, if those persons be excessively vicious, they forfeit their title to maintenance, and the donation may be valid even according to Misra's opinion. But if he make the gift, thinking virtuous persons to be vicious, then, since the householder could not distinguish right from wrong, his gift is not valid. The whole subject should be similarly examined: and if at any time it be contested whether such a gift be valid or null, it must necessarily be then determined which opinion is best.

If a king give the whole of his dominions to his eldest son qualified for the empire, although his other sons be void of offence, the gift is valid, provided it be the act of a prince neither insane nor otherwise disqualified, for it is done in conformity with the practice of former kings (as shown in sacred and popular histories) without offence on the part of the other sons, or of their father Thus Des'arat'ha* intended to commit his kingdom to Ra'ma, in the presence of Vasisht'ha and many other sages, and in presence of the citizens *at large*, although Bharata and his other sons were faultless, but afterwards, excluding Ra'ma and the rest, he gave his kingdom to Bharata, as a boon to Caice'yi † Even now it is seen in

* Fifty fifth of the four ri - † Wife of Des'arat'ha

practice, that entire kingdoms are ſeverally held by one prince, although he have brothers.

SOME, remarking that the kingdom of AYO'DHYA' was not divided, hold that kingdoms are indiviſible, on the authority of cuſtom, although it be not expreſſly declared in the text of any ſage.* Though one kingdom may have been undivided, can the practice be grounded on the *Véda*? may it not have been ſome cuſtom accidentally *eſtabliſhed*? Let it not be ſaid, that the conſecration of the eldeſt ſon, to the excluſion of the reſt, appears from the ſpeech of VASISHT'HA in the *Rámáyana* of VA'LMI'CI.

" AMONG all the ſons of ICSHWA'CU,† the firſt born is king;
" thou, ſon of RAGHU,‡ art firſt born, and ſhalt this day
" be conſecrated to the empire:

2. " This preſcriptive law in thy family thou canſt not now
" reject, O ſon of RAGHU! rule, like thy father, far famed
" prince, the vaſt empire of the gem-producing earth."

THE difficulty is removed by limiting this rule to the poſterity of ICSHWA'CU, for he ſays, " among the ſons of ICSHWA'CU," and adds, " in thy family." Shortly before *the paſſage quoted*, and after the curſe *pronounced by* JA'BA'LI, VASISHT'HA ſays:

" JA'BA'LI knows the courſe of this world; he has ſaid this,
wiſhing to diſſuade thee."

IT is implied by this verſe, that the ſages utter what is calculated to diſſuade RA'MA from his intention of retiring to the foreſt in compliance with his father's commands. It may therefore be ſaid, that the ſpeech is adapted to diſſuade RA'MA from his deſign of reſiding in the foreſt, and does not eſta-

* This diſcuſſion is *not altogether* ruſpended, for the great poſſeſſions, called zemindaries in official Language, are conſidered by modern *Hindu* lawyers as tributary principalities, and it might ſeem neceſſary to determine whether they be alienable and hereditable by the ſame rules with other landed property.

† Son of MENU, and firſt of the family named Children of the Sun. ‡ Fifty third of the ſolar race.

bliſh

bliſh an *univerſal* law, that the firſt born ſhall take the kingdom. When RAMA aſcended to the abode of LACSHMI, his own ſons, and the ſons of his younger brothers, were ſeverally conſecrated to different portions of the empire: now RA'MA, wholly wife and the inſtructor of mankind, did not act inconſiſtently with the law.

IT ſhould not be argued, that, among the deſcendants of ICSHWA'CU, the eldeſt may not have been *always* conſecrated to the empire; but it was practiſed in the family of BHARATA:* thus when PA'NDU retired to the foreſt, his kingdom, governed by DHRITARA'SHTRA,† fell under the domination of DURYO'DHANA; but recovered by BHI'MA and his brothers, was enjoyed by YUDHISHT'HIRA, and not ſhared by his brethren: therefore a kingdom is indiviſible: but the inauguration of the ſons of LACSHMANA, mentioned in the *Rámáyana*, was not a conſecration to the paternal kingdom, but to new dominions given at the pleaſure of the donor, and conquered by their father: thus the two ſons of BHARATA were conſecrated kings of *Gandharva* conquered by BHARATA; the two ſons of SATRUGHNA were conſecrated kings of two cities founded in the foreſt of *Madhu*, which had been conquered by SATRUGHNA; and two cities, founded in the region of *Cárapat'ha*, were given to the two ſons of LACSHMANA. The younger brothers of RA'MA, and the younger brothers of YUDHISHT'HIRA, *who were both* images of the ſupreme God and of deities, *(the firſt* born to ſlay RA'VANA; *the latter*, to relieve the earth from *the* burden *of a multitude of tyrants;)* may have ſurrendered ſovereign power from reſpect to their elder brothers.

IT is ſaid, that the ſpeech of YUDHISHT'HIRA to ARJUNA, in the *Mahábhárata*, is delivered with conſideration of the reſpect due to ARJUNA and the other brothers, in the order of ſeniority;

" THE brave BHI'MA-SE'NA is worthy of dominion: what is empire to me, who am *thus* unmanned?

2. " I cannot bear theſe reproaches, which you utter in wrath: let BHI'MA be king; I wiſh not to live, O Hero! depreſſed as I now am."

* Twenty ſecond of the lunar race. † The blind elder brother of PA'NDU.

IN

In answer to the objection, how can YUDHISHT'HIRA, speaking from his own affliction, be affirmed to respect ARJUNA as next in seniority? It is added, that he acknowledged it on account of his dejection at his own unfitness for war; and there is no intention of denying the seniority of ARJUNA, accordingly the consecration of the five sons of YAYA'TI,* an ancestor of BHARATA, is mentioned in the *Herivanśa*, and the consecration of other princes, both in this and other families, is also mentioned in the *Herivanśa*, and other works: such were NRIGA, NARA, CRĬMI, SUVRATA and ṈSIVI, sons of USINARA; VRĬSHADARBHA, SUBI'RA, CE'CAYA, and MADRA, sons of ṈSIVI;† and MUDGALA, SRĬNJAYA, VRĬHADISHU, YA'VINARA, and CRIMILA'SWA, sons of VA'YA'SWA, and surnamed PANCHA'LA. The inference is denied; for there is no proof, that a partition was made of their paternal kingdoms: and it is difficult to establish the great respect shown by LACSHMANA and the other *brothers of* RA'MA, by BHI'MA and others *brothers of* YUDHISHT'HIRA, by DUHSA'SANA and other *brothers of* DURYODHANA, and by *all* others *similarly circumstanced*. If BHI'MA, ARJUNA, and the rest, through respect alone, surrendered the empire to which they were entitled, why did they not yield their *common* wife DRAUPADI to YUDHISHT'HIRA alone?

BUT, in fact, a kingdom should be divided among virtuous brothers, able and willing to protect it: for sages have not inserted kingdoms under the title of indivisible property. It does not become men born in these days, to imitate the conduct of RA'MA, YUDHISHT'HIRA, and others, who were endued with immeasurable strength, courage, self-command, virtue and knowledge, and were attended by VASISHT'HA and other sages. The speech in the *Rámáyana* (" among all the sons of ICSHWACU, the first born is king &c.") is adapted to dissuade RA'MA from retirement in the forest; for ṈSATRUGHNA divided and gave to his sons the kingdom which he acquired in the forest of *Mad'hu*.

LET it not be objected, that, were it so, VASISHT'HA would be a liar. For,

* Fifth of the lunar race

† Descendants of ANU, son of PURU, and to whom the north was allotted by that prince. In the *Bhágavata* four sons of USINARA are named, ṈSIVI, VARHA, ṈSAMI, and DACSHA.

adverting

adverting to the fact, that the first born happened, in *all* previous instances, to be consecrated to the empire, he mentions that fact. As it is not expressly declared, that the sons of Us'INARA received the paternal kingdom, so it is not declared, that they received any other than the paternal dominions. Consequently there is no proof, that a kingdom is indivisible: but those, who are qualified to govern the realm, receive kingly power: and those, who have great qualificatioos, abandon the paternal dominions and conquer other realms; but do not reassume the hereditary empire. The government of the realm, the protection of subjects, and the payment of tribute by modern princes subject to a paramount sovereign, may, in this view of the settled usage, be determined with little *exertion of* intellect.

We infer from a passage of the *Adhyátma Rámáyana*,* "a son, *who obeys not his father*, is dirt," and another of the *Srí Bhágavata*, "it is thy father's command," that the son, who refuses his assent to the father's gift of chattels, shall be restrained from such perverse conduct: nor is it questioned, but he may have some share of the paternal effects. However, the history of kingdoms shows, that, to the exclusion of this son, one eminently endued with the virtue of justice, and other excellencies, is entitled to the royal authority. If the maxim, that a kingdom is indivisible, be not deduced from collections of law, still the kingdom would with difficulty be taken by all the brothers. Thus So'MACA, descended from the PANCHA'LA, had a hundred sons; and DRUPADA, son of PRISHATA the youngest of those sons, is mentioned as king in the *Herivans'a*: of the rest not even the names are recorded. In the *Rámáyana* of VA'LMI'CI, CAICE'YI thus addresses MANT'HARÁ distressed at hearing the *intended* consecration of RA'MA.

"IN RA'MA there is nothing inauspicious, nor is there
"malevolence in his great soul; have no apprehensions,
"therefore, hearing of RA'MA's consecration.

2. "A HUNDRED years after RA'MA, BHARATA shall sure-

* Ascribed to VYA'SA. The passage, to which this short quotation alludes, is a speech of RA'MA, in answer to the reproaches of CAICE'YI, "Say not so, I would give my life for my father, I would [illegible] deadly poison; I would forsake my wife SI'TA', *or* my mother CAUSALI', I would relinquish the [illegible] He, who unbidden fulfils his father's wish, is first of sons, he, who does so when commanded, [illegible] dle rank; he, who, though bidden, complies not, is *vile as dirt*."

" ly obtain in his turn the kingdom of his ancef-
" tors."

HERE is intimated the regular ſucceſſion of brothers to the kingdom of their anceſtors, not their partition of the realm. Had ſhe ſeen, or heard of, the partition of kingdoms, ſhe would require for BHARATA a ſhare of the dominions, not regular ſucceſſion to the whole. It is evident, that kingdoms in general were then indiviſible.

IMMEDIATELY after the paſſage quoted, MANT'HARA' replies:

" IF RA'GHAVA* be king, his ſon, and after him another, and
" again another, deſcendant will be kings."

2. " CAICE'YI! BHARATA will be excluded from the roy-
" al race. All the ſons of kings do not remain in obedi-
" ence to the eldeſt:

3. " But, of many ſons, one only is conſecrated to the em-
" pire. If all were kings, it would be the higheſt injury:

4. " Therefore, ſpotleſs beauty, kings commit the affairs of
" government to their eldeſt ſons, or to others more virtu-
" ous.

5. " DOUBTLESS they conſecrate to the empire the eldeſt *by*
" *birth or excellence*, and never commit the entire kingdom
" to his brothers.

IN anſwer to the ſuppoſition, that BHARATA might ſucceed after a hundred years, ſhe ſays, "if RAGHAVA (meaning RA'MA) be king, his ſon and remoter deſcendants *will ſucceed, there will be no room for the inauguration* of BHARATA conſequently thou erreſt." † By this CAICE'YI's ſuppoſition

* *Raghava*, general patronymick of the poſterity of RAGHU, but here reſtricted to RAMA, as in the ſpeech of VASISHTHA to RA'MA, already quoted

† This gloſs is ſomewhat abridged from the original

is not confirmed; *on the contrary*, the title of the middle brother to ſucceed after the death of his elder brother although he leave a ſon, which, from what CAICE'YI' had ſaid, might have been inferred as founded on ſcripture, is refuted. " The ſucceſſion of RA'MA's poſterity will exclude BHARATA:" that is, no one of the deſcendants of BHARATA will be king. If BHARATA, obeying RA'MA, be ſupported by him like a ſon, will he ſhare the empire, or *ultimately* obtain the whole? In anſwer to this, it might be aſked, do all the ſons of kings obey the eldeſt? In fact they do not; therefore BHARATA will not long remain in obedience to RA'MA. Nor will he be allowed to ſhare the empire. " Even among many ſons, one only is conſecrated:" that is, all the ſons do not ſhare the empire; how then ſhould a brother *obtain a ſhare, after the eldeſt has gained poſſeſſion of the whole?* Uſage, not the ſcripture, is the ground of conſecrating one ſon only. This ſhe intimates *in the third verſe:* it would be an injury, if all were conſecrated; that is, the empire would be impaired by diviſion; or ſtriſe might ariſe between the brothers, ſhould they reſide in ſeparate dominions. Therefore, " kings commit the affairs of government to the eldeſt ſon." May not the middlemoſt, or other ſon, be inaugurated? Since the eldeſt ſon, being firſt, cannot be paſſed over, his conſecration is directed: but, if he be vicious, another ſon, who is virtuous, may obtain the kingdom. Conſecration to empire is thus ſhown; therefore, *ſhe adds*, the eldeſt ſon of RA'MA, and not BHARATA, will obtain the empire.

IT ſhould not be objected, that the ſpeech of MANT'HARA' is intended to excite diſcord, and is no authority. Such a diſpoſition would not be excited in *the mind of* a hearer by the *ſuggeſtions* of a perſon ſpeaking inconſiſtently with the reaſon of the law, with expreſs ordinances, and with received uſage: it may be affirmed, that the ſpeech of MANT'HARA' is not inconſiſtent with theſe three. It is conſiſtent with the reaſon of the law; for ſhe ſhows the argument of it: *and* it is conſiſtent with ſettled uſage; for VAS'ISHT'HA ſubſequently declares, that " among all the ſons of ICSHWA'CU, the firſt born " is king:" and the doubt abovementioned, whether the declaration of VAS'ISHT'HA be reſtricted to the poſterity of ICSHWA'CU, is obviated by the general aſſertion of MANT'HARA'.

It should not be objected, that, were it so, the allotment of a divided kingdom to the two sons of SATRUGHNA would contradict that assertion: and it would be inconsistent with an express ordinance (Book V, v. CCCLXVIII); for, in the want of express texts of law, partition by a father ought to be made in the same mode with partition among heirs. If no contradiction be apprehended, there is nothing to prevent partition: and the reason of the law has more authority in judicial procedure, than *the letter of* express ordinances. Thus MISRA says, "civil law is indeed founded on reason, not on revelation;" that is, he does not lay much stress on the *Véda* in judicial decisions (for a text of the *Véda* on partition by a father is preserved by BAUDHA'YANA); but establishes the superiour authority of the reason of the law, in comparison with *the letter of* express ordinances.

SOME explain the second verse, "all the sons of kings do not retain life, when the eldest brother remains:" and they quote the remainder of MANT'HARA''s speech.

"RA'MA and LACSHMANA are closely united *in mutual friend-*
"*ship;* their brotherly affection, like *the union of* the *twin*
"sons of AS'WINI, *is* known to the world."

2. "RA'MA, therefore, will in nothing injure LACSHMANA;
"but, doubtless, he will injure BHARATA.

3. "THY son therefore must hasten to the forest from thy
"mother's house: such must be his fate."

"RA'MA does not regard BHARATA, as he does LACSHMANA: the life
"of thy son (now residing in his maternal grandmother's house) will there-
"fore be attempted by RA'MA, when he has obtained the empire; and,
"to save his life, BHARATA must retire to the forest." This they hold to be implied by this speech. But that exposition is wrong, for it would be a vain repetition of what had been already said, and would be spoken without cause.

* Literally, "RA'MA is closely united to the son of SUMITRA, and LACSHMANA, to the descendant of RAGHU;" to avoid ambiguity the patronymicks are omitted, and the phrase shortened

THEREFORE,

THEREFORE, ſhould a father hearing theſe inſtances from the *Purânas* and other works, commit the kingdom to his eldeſt, or other virtuous, ſon, the gift muſt neceſſarily be conſidered as valid, *even* according to the opinions of MISRA and others: there is no difficulty in aſſerting, that the nullity of gifts, as mentioned by them, ſuppoſes caſes other than *the gift of* a kingdom; for a different practice in reſpect of royal ſucceſſion is mentioned in the *Rámáyana*.

SHOULD he commit the kingdom to his daughter's ſon or other *remote heir*, although his *own* ſon be void of offence, then indeed it ſhould be determined as is propoſed; but, if he make a proviſion for the ſupport of his other ſons, and give his kingdom or other landed property to one ſon, then the gift is valid according to all opinions; for his family is not *thereby* deprived of ſubſiſtence. It is not proper to aſſert, that he, who has power to give away the perſon of his ſon, has not power to give away immoveable property, without the aſſent of his ſon.

IF, making a proviſion for ſons void of offence, he give his kingdom to his daughter's ſon, or to a ſtranger, what is the rule in that caſe? The gift even of a kingdom is valid, as it is of *other* landed property; for no ſpecial prohibition, nor any ſuch uſage, is found in regard to kingdoms. But *no father, who diſtinguiſhes right from wrong, would be ſo diſpoſed.*

IF a king paramount, viewing the inſtances of kingdoms given by a father as abovementioned, give the whole kingdom to one brother, without intending an injury *to the reſt*, he commits no offence; for he is equal to a father. But if the father die after giving away his kingdom, and the king paramount direct, that it ſhould be diſpoſed of according to law; in this caſe, it does not appear conſiſtent with the reaſon of the law, that one brother ſhould take the whole, without the aſſent of the reſt.

WHAT is the "ſubſiſtence of the family," ſpeaking of the ſons of kings? As much as each conſumes in food and apparel: not merely enough to ſupport life; for a man, retiring to the foreſt, may ſupport life upon leaves, roots, fruit and the like; and the ſubſiſtence of the family, mentioned

by all sages, would be unmeaning. But should another of the king's sons say, "needing as much food and as much raiment as this anointed brother, I give as much to the poor and helpless. these wants cannot be supplied *out of* that appanage," his claim should not be admitted by the paramount: no other, not even his father, can be equal to that *consecrated brother*; for the law admits, *that a king is* a portion of *the deities of* INDRA and other deities, and royalty obtains much reverence. Even *Brahmanas* pronounce the praises of kings. *Brahmans*, reverend themselves even in the sight of deities, for to them are duties committed, to them are the *Védas* intrusted, and to them is great favour shown by the supreme ruler, because, contemning riches, they accept a subsistence on alms alone, in subjection to others. Thus, in the *Sri Bhagavata*, CRISHNA says of SANACA and the rest.

"SRI,* for whose *momentary* regard *others* perform austerities, deserts not me, (though I need her not,) because I acquire merit from respect *shown* to these, the dust of whose lotos-like feet is holy, and who instantly remove every foulness.†"

THOUGH some modern priests are, in a certain degree, lessened by their misconduct, still great respect should be shown to them, in honour of former generations, and because it is said *by a deity* in another *Purana*, "a *Brahmana*, learned or unlearned, is my body" it is not proper, that one bound to respect should notice the faults of a person to whom reverence is due

FROM apprehension of offending very great persons, it is not *here* examined whether some modern princes, who are not independent in the government of their subjects, but merely employed in levying the revenue of the paramount, should, or should not, be acknowledged as kings.

XVI.

YA'JNYAWALCYA:—IN distress for *the maintenance of* the fa-

* Abundance, *or prosperity*, personified.

† According to the gloss of SWAMI, which it is unnecessary to translate.

mily,

mily, *property* may be given away, except a wife or a son: but not the whole of a man's estate, if he have issue living; nor what he has promised to another.

What has been promised to one person in this form, "I will give it to thee," may not be given to another: but, if the prior promise were made to a person not legally capable of receiving the gift, then it may be given to another: for a text (XLVII) shows, that there is no danger in withholding what has been promised to a person incapable of receiving. It is observed in the *Retnácara*, on the text quoted (XLVII), that want of religious qualification incapacitates for *the receipt of* gifts: this will hereafter be discussed.

What is the rule if a man give to one, what he has promised to another? Misra says, every gift of what has been promised, is invalid. This should be examined; for whence is it deduced? *It is said*, from the texts of Ya'jnyawalcya and others (XVI &c.): but the obvious meaning of these texts forbids the gift, as it does the donation of a wife, a son and so forth; and Misra *himself says*, that *civil law is* founded on reason; in proof of which the text of Vrihaspati is quoted:

XVII.

Vrihaspati:—A decision must not be made solely by having recourse to the letter of written codes; since, if no decision were made according to the reason of the law *, there might be a failure of justice.

And here, effects voluntarily promised by the owner not *immediately* becoming the property of another, the reason of the law is not applicable.

Should it not be established, that there is no independence in regard to what has been promised; and thus the gift is null, because it is made by a person who is not uncontrolled? No; for in that instance, want of independence is not proved; the obvious sense of the texts of Ya'jnyawalcya and

* *Or according to universal usage*; for the word *Yukti* admits both senses

others

others *merely* forbids the gift; and, in the title of void gifts, want of independence denotes want of ownership.

It is argued, that, from the term, "not his own master," in the title of void gifts, it is not understood, that he is not owner; but, wherever the term "want of independence" is technically employed, every gift by such a person, who is not owner of the chattel, is void; for the text of Menu and Yama declares null such a gift or sale *made by any other than the true owner* (Chapter II, v. XXVII); and sold is employed in the text of Na'reda (Chapter II, v. XXVI) in the comprehensive sense of given, or otherwise aliened: even a gift of his *own* paternal estate, by a pupil residing in the family of his teacher, may be void; or, if his want of independence in regard to his patrimony be not admitted, and a gift or alienation of wealth acquired by himself, or otherwise, be then made by a son, whose father is living, without the assent of the father or other *superiour*, some part of Misra's opinion should be admitted, though contrary to the opinion of Ji'mu'ta va'hana: and as for what has been said, that want of independence, in respect of what has been promised, is not proved; *even* that is not established by the texts of Ya'jnyawalcya and others: thus, if he be independent, how should he be fined? The amercement for a gift of what has been promised to another, proves his want of independence; it is not consistent with common sense, that a man should be fined, who gives that, in respect of which he is uncontrolled: neither is want of ownership understood from the term "want of independence," but subjection to another; and, in the dictionary of Amera, independent, or his own master, is opposed to dependent, or subject to another: in like manner, a gift of female property by a wife, without the assent of her husband, is not valid; but the gift of female property by a wife, on a general permission to give *presents*, is valid; it is not required that the number, or quantity, be specified: but, for a gift of her husband's property, it is requisite, that the number or quantity be specified in this form; "give so much wealth:" this distinction does exist; yet the term "exclusive dominion" is applied to female wealth; or the woman has exclusive dominion, as declared by the text, "the absolute exclusive dominion of women over nuptial gifts is perpetually celebrated:" and the same law is applicable

cable even to other perſons, who are technically deſcribed as "ſubject to control."

All this argument is contradicted; for even Misra does not proceed to ſo great a length in regard to the ſeparate property of a woman; and gifts of their own effects by ſubjects, without the aſſent of the king, and by younger brothers, without the aſſent of the eldeſt brother, are ſeen in hundreds of inſtances.

Therefore, ſhould a man give to one, what he has promiſed to another, the laſt donee ſhall obtain the effects; but the king ſhall impoſe an amercement on the donor. It is not, however, expreſsly ordained, that an equivalent ſhall be given to the perſon, to whom the promiſe was made. If the firſt promiſe be made for civil purpoſes, and the thing be afterwards given for religious uſes, what is the law in that caſe? The anſwer is, Na'reda premiſing gifts for civil purpoſes (II 2), and declaring unalienable what has been promiſed to another (IV 2), merely forbids the giving, for ſuch purpoſes, what has been promiſed to another: it follows, that there is no offence in ſuch a gift for religious uſes; and that the gift is valid. But in fact, ſhould a man fraudulently give, for religious purpoſes, what has been promiſed to another, although he have other effects proper to be given; and do not ſatisfy the perſon to whom the promiſe was made; it is conſiſtent with common ſenſe, that he ſhould be amerced. This will be further examined in another place.

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SECTION II.

ON ALIENABLE PROPERTY, AND ON VALID OR IRREVOCABLE, AND INVALID OR VOID GIFTS.

ARTICLE I.

ON ALIENABLE PROPERTY.

XVIII.

VRĬHASPATI:—A MAN may give what remains after the food and clothing of his family: the giver of more, *who leaves his family naked and unfed*, may taſte honey at firſt, but ſhall afterwards find it poiſon.

2. OF houſes and of land, acquired by any of the ſeven modes of acquiſition, whatever is given away, ſhould be delivered, diſtinguiſhing *land* as *it was* left by the father, or gained by the occupier himſelf:

3. At his pleaſure he may give what himſelf acquired; a pledge muſt be diſpoſed of by the law of pledges, *or ſubject to redemption;* but of property acquired by marriage, or inherited from anceſtors, not every gift ſubſiſts.*

4. *But* if what is acquired by marriage, what has deſcended from an anceſtor, or what has been gained by valour, be given with the aſſent of the wife, of the coheirs, or of the king, the gift has validity.

5. HEIRS have a lien equally on the immoveable heritage,

* According to another interpretation, "the whole ought not to be alienated."

whether

whether they be divided or undivided; and a ſingle parcener has no power to give, pledge, or ſell the whole.

THE laſt text is attributed to VYA'SA by JI'MU'TA VA'HANA; and *herein* RAGHUNANDANA follows him. What exceeds the food and clothing required by the members of the family, who are entitled to maintenance, as abovementioned, may be given away. Otherwiſe, the family wanting food and clothing *in conſequence of more being given*, the donor's conduct is not virtuous.

" THERE is ſin in the gift of what does not exceed, and virtue, in the gift of what does exceed, *the proper food and clothing of the family.*

MISRA.

IT is intimated, that what does not exceed the maintenance of the family, ſhould not be given away, even for religious purpoſes; but it is alſo intimated, that the gift of what ſhould be appropriated to the food and clothiog of the family, is valid. " The giver of more may taſte honey at firſt:" by this it is intimated, that bliſs is at firſt obtained; thence it follows, that the religious purpoſe is accompliſhed; and that purpoſe cannot be accompliſhed, unleſs the gift be valid: therefore the gift appears to be valid.

IN the *Smriti'ſa'ra* the *validity of the donation is admitted:* "a man's own gift is valid, becauſe he has property, which is the eſtabliſhed cauſe *of validity.*" But it is not admitted, that the religious purpoſe is attained; for he has not obſerved the commands of the law.

SOME hold, ſince the text directs that a man ſhould give what remains after feeding and clothing *his* family, and ſince it is not applied as an exception to the gift of more; therefore his duty is not fulfilled, if he give not what exceeds the food and clothing of his family. But this does not ſeem proper; for the text relates to civil affairs, and it is irregular to ground on it a rule for *religious* gifts. A cauſe of failure in religious merit does not eſtabliſh demerit. Thus, the bathing in the Ganges being accidentally accompliſhed, in neglect of advice not to go that way to the Ganges, by which was implied the danger of meeting tigers or the like, the religious

religious purpose is *nevertheless* obtained: but it is not obtained by the gift of property belonging to another owner; for this is not a gift in the form of a relinquishment vesting property in another after devesting his own.

According to the opinion of those who maintain the invalidity of the gift, the religious purpose is not obtained. But the expression, "the giver may taste honey at first," is not taken literally. His conduct, in delivering his whole estate into the hands of another, may at first savour like honey, by affording mistaken pleasure, or causing present satisfaction; but afterwards it becomes poison, because it is punished in a region of torment. There is no difficulty in considering this as relating to civil gifts. But it may be applied indiscriminately to religious merit: otherwise, the gift or sale being sinful, but religious merit cancelling the sin, or himself not being born again, the religious merit of the donor would be inconsistent with his "afterwards finding it poison."

According to the opinion of Misra, this text may imply the invalidity of a gift, where a man's whole estate is given; and, according to the opinion of Ji'mu'ta va'hana, it may imply that the gift is valid.

XIX.

Ca'tya'yana declares what may and may not be given:—Except his whole estate and his dwelling house, what remains after the food and clothing of his family, a man may give away, whatever it be, *whether fix or moveable:* otherwise it may not be given.

"His dwelling house;" one house, without which he himself, or his family, might want a dwelling. It is meant generally, comprehending a pond supplying water for common use, and the like.

Is not the excess above the subsistence of the family unmeaning, after excepting the whole of his estate? It should not be said, a gift of his whole estate might be made with a reservation of a single shell only. Were it so,

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his whole eſtate would be *an* unmeaning *exception*. Nor ſhould it be ſaid, the gift of the whole eſtate is excepted to prevent the poſſible gift of his whole eſtate by a man able to maintain his family on alms; for there is no authority for ſuch an inference. It is not eſtabliſhed, that a man, able to ſubſiſt his family on alms or the like, may not give away his whole eſtate: for it is the meaning of the ordinance, that the family ſhould be any how ſupported.

Some obſerve, that a man, though able to maintain his family on alms or the like, ought not to give away his whole eſtate; for, ſhould alms or other means at any time fail, his family might be diſtreſſed. Still what can be underſtood from the expreſſion his "whole eſtate?" The whole eſtate ſhould be underſtood in the mode already mentioned; that is, the whole of his effects including what is required for the maintenance of the family until other property be gained. Such a meaning is deduced from the ſequel, "what remains after the food and clothing of his family." Or the exceſs above the maintenance of the family is expreſsly declared, *to provide* againſt the attempt of giving away even a trifle, when the family is but ill maintained out of the whole eſtate. Conſequently, the gift even of a trifle, if it be not an exceſs above the ſubſiſtence of the family, is forbidden. Or the text may be read, "*ſarvaſwam grĭha varjitam*," inſtead of "*ſarvaſwa grĭha varjanŭ*." Conſequently the whole of his own property (except his dwelling houſe) that remains after the food and clothing of his family, a man may give away: ſuch will be the ſenſe *of the text*. "The whole" is there mentioned to ſhow, that moveables and immoveables are not diſtinguiſhed. "His own;" by this term, depoſits and the *like* are excepted: the ſenſe is, his own ſeveral property; by which joint-property is alſo excepted. In concurrence with other ſages, a diſtinction muſt be underſtood in reſpect of a thing promiſed, a wife, or a ſon. Here the condition *expreſſed* in the text concerning alienable property, that it muſt exceed the ſubſiſtence of the family, *ſhows*, that the gift of what does not exceed the ſubſiſtence of the family, is not valid; and the declaration, that joint-property may not be given, *ſhows*, that the gift of ſeveral property is valid. As in the command for performing a ṥrádddha at the conjunction, it appears from the authority of the prohibition againſt performing a ṥrádddha at night, that the

śraddha or obsequies should be performed at the conjunction, but not at night, and that no benefit arises from a *śrádddha* performed at night, so they hold MISRA's meaning to be similar.

WHERE the benefit *of an act* is deduced from the *Veda* alone, the means of obtaining that benefit are established in conformity with the rule commanding a time different from night, and the benefit is not obtained unless a time other than night be taken for there is no ordinance showing benefit from a *śraddha* performed without observing that distinction But here the obligation of making gifts is deduced from the *Veda*, and a sufficient cause of property in the donee is found in the fact *of the gift*, but property cannot vest in another person, unless previous property be annulled therefore, that being established, *the transfer of property* is established on the intention of the donor to make a gift. By logical inference, gift being sufficient cause of annulling previous property, exceeds above the subsistence of the family cannot be *made* a condition by words alone, for perception arises from words and logical inference jointly, and it is difficult *to establish another opinion*. Such are the sentiments of those who follow the opinion of JÍMÚTA VÁHANA.

" By the seven modes of acquisition" (XIX 2). The modes of acquiring wealth are declared by MENU

XX.

MENU:—THERE are seven virtuous means of acquiring property; succession, occupancy or donation, and purchase or exchange, conquest, lending at interest, husbandry or commerce, and acceptance of presents from respectable men.

THE causes of gaining wealth *are these*. " Succession,' or inheritance of property, as the term is explained in the *Vivada Retnacara* and *Vivádá Chintámeni*; that is, property received in right of affinity and relation. " Occupancy" or gain, the finding of a waif or the like. " Conquest " explained in the *Retnácara*, victory over an enemy in battle. Consequently, what

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is gained by ſucceſs in gaming, or the like, is excepted; it is a diſhoneſt acquiſition, for it partakes of the quality of darkneſs. The very ſame opinion is intimated in the *Chintámeni*.

THREE, ſucceſſion, occupancy and purchaſe, are allowed to all claſſes; conqueſt is peculiar to the military tribe; lending at intereſt, and huſbandry or commerce, belong to the mercantile profeſſion; and acceptance of preſents from reſpectable men, to the ſacerdotal claſs. Theſe are virtuous means of acquiring property: but on failure of theſe, prieſts and the reſt may ſubſiſt by other means allowed in times void of diſtreſs, ſuch as huſbandry and the like; or, on failure of theſe, by the beſt modes allowed in times of diſtreſs.

CULLU'CABHATTA.

XXI.

MENU:—LEARNING, art, work for wages, menial ſervice, attendance on cattle, traffick, agriculture, content with little, alms, and receiving high intereſt on money, are ten modes of ſubſiſtence.

IN the *commentator's* gloſs, which follows the text above quoted, declaring theſe to be modes of ſubſiſtence in times of diſtreſs, *he ſhows that* each of theſe modes of ſubſiſtence may be followed in times of diſtreſs by the perſon, to whom it is forbidden in other circumſtances: as work for wages, menial ſervice, and the like, by a man of the ſacerdotal claſs; and ſo of arts and the reſt. "Learning" (except that contained in the ſcriptures) as medicine, philoſophy, *charms* counteracting poiſon and the like, practiſed for ſubſiſtence by all claſſes in times of diſtreſs, is no offence. "Art," as painting and the like. "Content with little;" for with content a man may ſubſiſt on his own, however little. "Receiving high intereſt on money;" lending on intereſt even in perſon, and ſo forth. By theſe ten modes a man may ſubſiſt in times of diſtreſs. Conſequently a prieſt in *great* diſtreſs may depend even on menial ſervice, arts, or the like, for his ſubſiſtence. Such is CULLU'CABHATTA's interpretation: but others argue, that, after declaring in the firſt text (XX) the modes of ſubſiſtence in times void of diſtreſs, this text

(XXI) intends the modes of ſubſiſtence in times of diſtreſs, implying the preſervation of life *only*. That however, in its conſequences, coincides *with the opinion of* CULLU'CABHATTA.

BUT others *again* hold, that the practice of *Vaiſyas* is allowed, by the following text, to a *Bráhmana* in times of diſtreſs; but is on no account *allowed* in other ſeaſons; for aſſiſting to ſacrifice, teaching the *Védas*, and receiving gifts and ſo forth, are declared to be the means of ſubſiſtence for a *Bráhmana*.

XXII.

MENU:—BUT a *Bráhmana*, unable to get a ſubſiſtence by either of thoſe employments *(his duties juſt mentioned or the duty of a ſoldier)*, or a *Cſhatriya, unable to ſubſiſt by his own occupations*, may ſubſiſt as a mercantile man, applying himſelf *in perſon* to tillage and attendance on cattle.*

AND here, it is irregular to give ſuch an interpretation to this text (XXI); for it is declared, that the modes of ſubſiſtence, delivered in the tenth chapter, are legal in times of diſtreſs: "Such, as have been fully declared, are the ſeveral duties of the four claſſes in diſtreſs for ſubſiſtence:" and the virtuous modes of ſubſiſtence for a *Bráhmana* in ſuch circumſtances are declared in the text *firſt quoted* (XX); ſince the modes of ſubſiſtence for a prieſt alone are declared, beginning with the text, "Should a *Bráhmana* afflicted and pining through want of food chooſe rather to remain fixed in the path of his own duty, than to adopt the practice of *Vaiſyas*, let him act in this manner," and ending with this text (XX). Immediately after it, the modes of ſubſiſtence for a *Cſhatriya* in diſtreſs are delivered in the text quoted (XXI); and, next to that, a diſtinction is declared in regard to intereſt on loans, which both texts permit the *Bráhmana* and the *Cſhatriya* to receive.

XXIII.

MENU:—NEITHER a prieſt, nor a military man, ſhould re-

* See MENU, Chapter X, v. 81. In quoting the text, the compiler has omitted the queſtion, and inſerted the words "but a *Bráhmana* or a *Cſhatriya*." on this reading, it has been neceſſary to interpolate the text, becauſe both employments are not allowed to the *Cſhatriya*. T.

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ceive intereſt on loans: but each of them, if he pleaſe, may pay ſmall intereſt, for ſome pious uſe, to the ſinful man, who demands it.

IMMEDIATELY after *this text*, the proper ſubſiſtence of a *Cſhatrija*, in times of diſtreſs, is particularly mentioned; as the proper ſubſiſtence for the *Bráhmana*, in ſuch ſeaſons, is mentioned in the texts, "Should a *Bráhmana*, afflicted and pining through want of food &c." But in all theſe texts a *Vaiſja* is not even named; and a *Súdra* is ſubſequently noticed; how then can the text, "there are ſeven virtuous means &c." (XX) relate to the four claſſes? The anſwer is, YA'JNYAWALCYA has in many places delivered a text applicable to the *Cſhatrija*, and ſimilarly deſcribing ten modes of ſubſiſtence.

XXIV.

YA'JNYAWALCYA: — AGRICULTURE, art, work for wages, ſcience, receiving high intereſt on money, *the uſe of a* carriage, *retirement in* mountains, ſervice of kings, *the office of* king, and alms, are modes of ſubſiſtence in times of diſtreſs.

BEFORE this he declares the ſubſiſtence of a *Bráhmana* in times of diſtreſs.

XXV.

YA'JNYAWALCYA:—A PRIEST, *when* oppreſſed by calamity, eating food received from any man whomſoever, is not tainted by ſin; for he is equal to the igneous ſun.

THEREFORE the text, "There are ſeven virtuous means of acquiring property" (XX), deſcribes the virtuous means of ſubſiſtence for a *Bráhmana* in times of diſtreſs; and the text, "Science, art, &c." (XXI), deſcribes the virtuous means of ſubſiſtence for a *Cſhatriya* in ſuch circumſtances: and there is no vain repetition in *twice mentioning* lending at intereſt, and huſbandry or commerce, explained by CHANDE'SWARA, VA'CHESPATI MISRA and CULLU'CABHATTA, receiving high intereſt on money, and agriculture or traffick.

It ſhould not be objected, that conqueſt and the like cannot be virtuous means of acquiſition for a *Bráhmana:* for MENU declares, that the higheſt beatitude may be attained by *Bráhmanas* practiſing, in times of diſtreſs, the duties propounded for *Cſhatriyas* and the reſt.

XXVI.

MENU:—SUCH, as have been fully declared, are the ſeveral duties of the four claſſes in diſtreſs for ſubſiſtence; and if they perform them exactly, they ſhall attain the higheſt beatitude.

THIS opinion ſhould be well examined.

It ſeems to be declared by the text of VRĪHASPATI (XVIII 2), that property partaking of the qualities of paſſion and darkneſs is unalienable. CHANDE'SWARA makes no remark on this point. But MISRA ſays, "the expreſſion is comprehenſive: he may alienе, at his own pleaſure, his own ſeveral property any how poſſeſſed; but property, *held* in coparcenary with another, cannot be alienеd without the conſent of the coparcener." MISRA's meaning is, that the words of VRĪHASPATI, *who was profoundly* verſed *in the law, intend property legally acquired, and do* except any *ſeveral* property from unalienable things, but do not except from alienation property acquired by other than thoſe ſeven means

As for the diſtinction declared by NA'REDA in regard to property partaking of *the qualities of* truth, paſſion and darkneſs, the ranking of uſury and the like under the quality of darkneſs is pertinent as it relates to *Bráhmanas* and the reſt in times void of diſtreſs.

XXVII.

NA'REDA:—*What is* acquired by *teaching* the *Védas*, by courage, or devotion, *what is received* with a damſel, from a pupil, or for a ſacrifice, and *what is* obtained by inheritance, are celebrated by ſages as the ſeven fold *diſtinction of* pure property.

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2. WHAT is gained by uſury, agriculture and traffick, or *received* as tolls or as wages for ſinging, or *as a return* for a benefit conferred, is conſidered as property partaking of the quality of paſſion.

3. WHAT is acquired by ſervile attendance, by gaming, by robbery, by *inflicting* pain, by diſguiſe, by larceny, and by fraud, is conſidered as partaking of the quality of darkneſs.

WHATEVER *ſeveral* property, acquired by any of theſe modes, is given away, even that was alienable; and the ſame ſhould be obſerved of property acquired by art and the like (XXI); and ſo in other caſes. Such, exactly, is MISRA's meaning.

" HOUSES and land, acquired by any of the ſeven modes of acquiſition" (XVIII 2) is an expreſſion uſed comprehenſively. In the caſe of other moveable or immoveable property, if land, a houſe, or the like, be given away, it ſhould not be reſumed: this the ſage intends to expreſs. Conſequently, ſhould chattels depoſited, or the like, be given away, the gift ſhould be retracted. Such is the whole meaning. " As it was left by the father or gained by the occupier himſelf," is ſubjoined to limit the rule; and is elucidated by the next verſe (XVIII 3). Such is the conſiſtent method of authors.

BUT others explain acquiſition, the means by which wealth is gained; intending property acquired by the means deſcribed in texts, which ſhow virtuous and other modes, ſuch as purchaſe and the like. Thoſe ſeveral means, in which an act of the receiver is requiſite for the acquiſition, muſt be conſidered as the ſeven modes: and one is included in another; as robbery, larceny, the buſineſs of uſury, and ſo forth. Conſequently the number of ſeven is not contradicted. Left by the father ſignifies inheritance only; and gained by the occupier denotes the receipt of gifts and the like; it is meant of caſes where no act of the receiver in expectation of gain is neceſſary to the acquiſition: and property, partaking of the qualities of paſſion or darkneſs, is, without difficulty, comprehended in the text.

A DISTINCTION is propounded (XVIII 3) relative to property acquired by the occupier himself, which the former text had declared alienable. What is acquired by a donee, without relation to another, may be given at his pleasure, even without the assent of sons, brothers, and the rest: and the distinction is derived from the text quoted by JI'MU'TA-VAHA'NA (XIV). Immoveable property, as land or the like, and a corrody in the form of a fixed allowance payable by the king or other person, and bipeds, or slaves and the rest, a man shall neither give away nor sell, even though he acquired them himself, without the consent of all his sons. Such is the sense *of the text* (XIV).

Is a bird unalienable or not? Since it appears from the word "biped," that even a bird *may not* be given without *the* assent *of heirs*, should it not be *held* unalienable? No, for VR'IHASPATI shows, that a decision inconsistent *with* the reason of the law must be avoided (XVII). On immoveable property, such as land or corrodies, children may be long subsisted. As it causes unlimited production of wealth, *it* is called an estate or *funds of support* the loss of it is pronounced dishonourable in a text of NA'REDA (XII), and the gift of it, without the assent of sons and others using the estate, is called loss in *this* text. Now a slave is such, for by agriculture or the like he is able to gain much wealth for his master. *It should not be objected*, that great riches may be acquired even by receiving high interest on gold or the like. Though *gold*, lent at a high rate of interest, may be equal to immoveable property, *affording wealth* like the alchymist's stone, or like the gem which daily produces gold, yet, if it be not lent at interest, there is nothing to prevent alienation Or it may be understood, that, if a contract be made for interest, *then gold or the like*, producing wealth by means of that contract, should not be given away If that be the rule, may not wealth be acquired, in some instances, even by means of birds for example, by the advanced price on birds well taught? This should not be granted were it so, the same might be extended even to quadrupeds, such as sheep and the like, and bulls or other animals employed in husbandry. If it be argued, that land, a corrody, or the like, may be understood to be declared in the text by the word "immoveable," and slave, bird, or the like, by the word "biped:" for it is a rule not to strain a text, and when the literal sense of the

terms

terms ſuffices, there is no occaſion for recurring to the reaſon of the law; and the text of VRĬHASPATI *therefore* is not applicable in this inſtance: the anſwer is, diſſimilar rules in reſpect of birds and ſheep, entitled to equal conſideration, would be inconſiſtent with common ſenſe. *Men of* ſome mixed claſſes ſubſiſt by the exhibition of ſnakes; ſhould they give one away without the conſent of their ſons, it would appear to be a loſs of the eſtate: yet a ſnake is not a biped. Since the ſons and the reſt *of the family* might be maintained, even after giving away a ſnake, by catching another, may it not be ſaid, that there is no loſs of eſtate? The ſame might be alleged in regard to a gift of land by *Brâhmanas* and others. As land is dependent on the king, may not the ſons and others recover it, and thus be exempt from difficulties? Be it any how in this inſtance; but thoſe, who ſubſiſt by the exhibition of apes, may fail in catching another, and *thus* be reduced to difficulties; for by labour muſt this end be attained; and it cannot be accompliſhed without much toil in the diſplay of ſcience, *and exertion of art*. On this ſubject it is ſaid, whatever mode of ſubſiſtence long maintains perſons of a *particular* claſs, even that is their real eſtate; *and* is intended by the word "immoveable;" biped literally ſignifies a bird, a man &c. and theſe may not be given without the conſent of *the donor's* ſons. This finally is the ſenſe.

It is argued that particular birds, being valuable bipeds, and ſlaves, being endued with excellent qualities and the like, may not be aliened without the conſent of ſons. It ſhould not be objected, that a thing *ſold* for any price may be valuable. Whatever bears a greater price, compared with other things of the ſame nature, is coſtly. Nor ſhould it be objected; in compariſon with what muſt it bear a higher price? If it be ſaid in compariſon with any bird; then, even what does not commonly bear a great price, may be dear in compariſon with a bird accidentally ſold for a leſs ſum; and thus, that *only* is cheap, in compariſon with which no bird has borne a leſs price; and all others are dear: and, ſince low-priced birds may be ſcarce, or all may be valuable, ſuch great refinement would be fruitleſs. A very high price may be diſtinguiſhed, with the king's conſent, by compariſon with the coſt of birds accepted by perſons in general; and ſo, in other caſes. This expoſition may be queſtioned; for great value is not implied, by the reaſon of the law, in declaring immoveable

property and the like to be unalienable. Thus, it is not consistent with approved usage, that, by a comparison with land measuring twenty cubits, deemed valuable in comparison with the quantity of a *pala* of gold, land measuring a single cubit should be alienated at the pleasure of the occupier alone. This and other points may be discussed in many ways.

"A PLEDGE must be disposed of by the law of pledges" (XVIII 3). As his own interest *in the pledge*, such should he make another's.

The *Retnácara*.

THE meaning is this: any man, pawning a chattel, receives a loan from some person; if the creditor give that pledge to *another* person, then the gift of the pawn is the same with a gift of the debt: therefore, as the debtor paying his debt to his creditor might redeem the chattel, so, in this instance, paying the debt to the donee he recovers the chattel. It is mentioned to make it evident that a debt *demandable* may be given away or sold. In fact it is included in what may be given at pleasure. Consequently, if a pledge be received for a loan of paternal wealth, it is subject to the law concerning patrimony: but if it be received for a loan of what was acquired by the man himself, it is subject to the same law with his own acquired property. Thus some expound the law. MISRA explains this clearly. The form *of transferring a pledge* is subjoined, "this thing was pledged to me, and is given by me to thee; it must be restored by thee to the owner, on receiving the amount for which it was pledged."

BUT others hold, that, in the case abovementioned, when a debtor gives to any person a chattel which is in pawn, then the donee may obtain that chattel after payment of the debt: that is, as the debtor had an interest, or restricted property, *in the thing pawned*, so has the donee: and after the death of the donor, on failure of his sons or other successors to his estate, should the creditor or his issue be living, the donee, wishing to obtain the pledge, may receive it on payment of the debt. This in effect follows from what has been said; for, unless payment of the debt be the condition, there would be no restriction to property *in* the pledge: and RAGHUNANDANA observes, in the *Dáyabhága tatwa*, that, "if the pawn remain unredeemed on the

the death of the seller or donor, then, since a property similar to that of the contracting party has been vested by sale or gift, the buyer or donee should redeem the pawn." Here, if the chattel pledged belong to the paternal estate, it is subject to the law respecting patrimony; but, if it were acquired by the man himself, it is subject to the law concerning such property.

In these two opinions a mutual contradiction arises; that is, after a gift or sale of a pledge by a fraudulent debtor, on his death and on failure of sons or other heirs, the payment of the debt by the donee or purchaser *according to one opinion*, or non-payment of it *according to another*, is *in either case* an *unjust* disparity. The question may be thus discussed; in regard to the donee, be it as it may be; but a purchaser, having paid a fair price, would suffer great loss, if he must again pay the debt with interest; which would be inconsistent with common sense: therefore he may obtain the pledge without payment of the debt; and such a rule being equitable in the case of a purchase, the same may be established in the case of donation. It should not be objected, that the loss, falling on the creditor who advanced his own money and long preserved another's chattel, would be inconsistent with common sense. A similar loss falls on the creditor, after the death of the debtor, if the pledge have been destroyed by the act of God or the king, or by the fault of the debtor. Nor should it be objected, that, where a thing, already *transferred* to another, is sold, the loss falls on the purchaser. The debtor has not transferred the thing *to his creditor*. Nor should it be objected, that, in this instance, the pledge is not destroyed by the act of God or the king. The sale of the pledge is a fault on the part of the debtor, *by which the pledge may be lost to the creditor*.

XXVIII.

Smriti, quoted by CHANDE'SWARA and RAGHUNANDANA:—If a man, having bailed or pledged a thing to one person, pledge or sell it to another, the last act shall prevail.

OTHERWISE, since the mortgage is cancelled by the redemption of it, there may be no obstacle to a valid gift or sale, even though a mortgage prevail. It should not be objected, that, supposing it to prevail,

ſhould a gift or ſale be made after it, that contract would not be valid, even though the pledge be ſubſequently redeemed; for it is reſiſted by the mortgage, which was in full force when the gift or ſale was made: but now, ſuch a contract, made while a mortgage ſubſiſts, is valid, and the donee or buyer may diſpoſe of the thing at pleaſure, when it has been redeemed; and thus ſhould the force of donation or ſale be admitted. Then it would be proper to ſay, that, both being good in law, both have equal force. As a depoſitary cannot withhold from the purchaſer a chattel, which had been bailed to him to be kept ten months, and which is afterwards ſold within that period, ſo a mortgage is cancelled by the *ſuperiour* force of a ſale: therefore the purchaſer can take the chattel from the creditor; and the debt remains unſecured by a pledge. But if the purchaſer bought the chattel, knowing it *to be mortgaged*, he muſt neceſſarily be puniſhed by the king: elſe, from the ſtate of the times, eſtabliſhed uſage in regard to loans would be now infringed by the audacity of knaves. Contracts of ſale, mortgage, and the like, muſt neceſſarily be made in the preſence of the king's officers, and ſhould be recorded by them. Yet if they were not preſent, but another perſon, who was by, prove the contract, the predominance of a ſale, where mortgage is oppoſed to it, is declared by RAGHUNANDANA himſelf: "what has *ſuperiour* force, even that is good in law." But here mortgage reſiſts the owner's *power of* diſpoſing of his effects at pleaſure, and is not preceded by the annulling of property: and therefore, whether prior or ſubſequent, it is ſuperſeded by donation or purchaſe, which are preceded by the annulling of the former owner's property, and have *ſuperiour* force. By the word "even," in the phraſe, "even that is good in law," the invalidity of a weaker contract is intimated: and here the mortgage, as a weaker contract, being invalid, what ſhould prevent the purchaſer obtaining poſſeſſion of that which is now become his own?

If it be ſaid, ſince the expreſſion, 'mortgage reſiſts the owner's power of diſpoſing of his effects at pleaſure,' intimates an oppoſition to gift, *ſale*, conſumption, and many other modes of diſpoſal; therefore a ſale, though valid while a mortgage ſubſiſts, does not authorize the purchaſer, now *become* owner, to diſpoſe of the thing at pleaſure: it is anſwered, the ſale

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would not then be valid. Nor is this apprehended by RAGHUNANDANA; for it would disagree with prior and subsequent works *of the same author*: therefore opposition to dispossal at pleasure is *effected by* restraining a debtor, who attempts such an act, by means of the king's officers, not by preventing a purchaser, who is not liable for the debt, from disposing of the thing at pleasure. But the purchaser should see the thing, and *have reason to* suppose it is not pledged to any man, when he pays a price *for it*; else he is punishable; such is the induction of common sense: and he should obtain immediate possession; for the sale may become void through want of possession during a long space of time; and the mortgage would then be *exclusively* valid.

IN this instance, the creditor obtains another pledge from the debtor, or the debt should be immediately discharged. If the debtor die, the creditor may receive it from his son or grandson, or he may recover it from any other property whatever left by the debtor. he cannot withhold that pledge from the purchaser; for no ordinance *permits it*.

RAGHUNANDANA remarks on the text above quoted (XXVIII), that the word sell *also* denotes gift annulling property. Consequently gift, sale, barter, and all other *contracts* devesting property, are intended.

THE moderns hold, that, if a man sell a valuable pledge for less than its worth, *that is*, less by the amount which is applicable to the redemption of the pledge, and with an agreement in this form, "on redeeming the pledge thou shalt have it," or if he make a gift or other alienation, with the same stipulation; then the pledge should be redeemed by the purchaser or donee in conformity with the text of YA'JNYAWALCYA (Chapter II, v. XXVIII). But in regard to pledges, since the owner's property subsists, it appears, that there is a distinction. Thus, where two contracts of *gift and* acceptance occur, since the property of the former owner is devested by the first donation, the gift last made by him is not valid, for it is made without ownership: and so, in regard to sale. But this is actually the foundation of validity in the gift or sale of a thing bailed or pledged, as *declared* in the text *lately quoted* (XXVIII): therefore, should the same thing be hypothecated to two creditors, the validity of the last mortgage cannot be reversed; for it is made

by the owner: and the validity of the former hypothecation being admitted, becauſe it was alſo made by the owner, they may be equally good; but the firſt has not ſuperiour force, ſince a deciſion inconſiſtent with the reaſon of the law is forbidden by VRĬHASPATI (XVII). Therefore, even in a contract of mortgage, ſome diſtinction, reſpecting the property in the effects, muſt neceſſarily be admitted, under the authority of which, even the purchaſer of thoſe effects may not diſpoſe of them at pleaſure, before the mortgage is redeemed. Such is the ſentiment of RAGHUNANDANA.

WHAT is the diſtinction? Not a ſpecifick difference inherent in property; for ſuch a difference cannot be therein admitted, fluctuating with the variations of time; ſince ſpecifick difference conſtitutes permanent ſpecies, and ſpecies is not regulated by time, produced with the production of ſubſtance, and deſtroyed with its deſtruction. Nor can another property ariſe therein; for there is a want of the requiſites *to conſtitute a title*. Let it not be argued, that the diſtinction is individual, becauſe the *Mímánſacas* do not acknowledge genus and ſpecies ſeparate from ſubſtance. There is no proof of ſuch individual diſtinction.

IT is ſaid, the intention *of the parties* conſtitutes the diſtinction. Thus, when a thing is pledged, the debtor intends, and expreſſes in words, "let this chattel, belonging to me, remain with him; until the period expire, it ſhall not be enjoyed by me or my relations:" and therefore, by virtue of that *declared* intention, even a purchaſer, like the debtor's heir, is debarred from the enjoyment of that chattel. *Thus* eſtabliſhed uſage in regard to loan and payment would not be infringed. Otherwiſe, no man would make a loan, apprehending that the debtor would ſell to another what he pledged to him.

IF it be ſaid, as a bailment, made by the owner for a ſpecifick period of ten months, is cancelled by a ſubſequent contract of ſale; and ſetting aſide the former owner's intention, (that it ſhould remain with the depoſitary to the end of ten months,) it muſt be delivered at the will of the preſent owner; ſo, even in this caſe, ſetting aſide the act of the former owner's will it muſt be delivered at the pleaſure of the preſent owner; elſe

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the enjoyment of chattels pledged by a herdſman's wife, as authorized by her former lord, might ſubſiſt without the aſſent of her ſecond huſband: the anſwer is, the intention of a bailment made for ſafe cuſtody only has little force, and is conſequently ſuperſeded by the ſtronger will of the actual owner; and therefore delivery is proper in that caſe: but here, the intention of a pledge, being inferred from the loan, retains its force until the loan be repaid; and therefore it is not ſuperſeded: and the enjoyment of a thing pledged by a herdſman's wife, being authorized by her former lord, is honeſt.

THIS is confirmed by the opinion of RAGHUNANDANA: and the author of the *Mitácſharà* in effect admits the debtor's ownerſhip in the pledge. According to the modern opinion, when a thing is twice hypothecated, the predominancy of the firſt hypothecation is founded on the pledge not being relinquiſhed by the creditor, who has received it.

FROM the text cited in Book I (v. CCLXXI.) it appears, that the produce of a thing held by one creditor is applicable to the payment of the debt due to him, although the debtor have the ownerſhip of it: or what has been artfully obtained by a creditor from his debtor, is applicable to the payment *of the debt due* to that creditor, not to any other. In this caſe, if a loan have been advanced on a pledge, the firſt lender is conſidered as entitled to the thing, not the laſt creditor. But this lender cannot be ſaid to have a ſtronger title than a purchaſer; for no ordinance declares it. By adequate puniſhment inflicted *in ſuch inſtances* on the buyer and ſeller, the king may relieve the fears of lenders.

"PROPERTY acquired by marriage" (XVIII 3) ſuppoſes alſo what is gained by valour. Not every gift, with or without conſent, ſubſiſts: therefore gifts of thoſe three kinds of property, as mentioned in the ſubſequent text, muſt be made with reference to *the conſent of* others.

The *Retnácara.*

THE meaning is, that the terms of the text denote, *that* the aſſent of another, as well as the aſſent of the giver, *is required.*

MISRA

MISRA explains "property inherited from anceſtors," immoveable property which has not been divided. Conſequently, the immoveable patrimony, received by brethren in right of their connexion *or affinity* as ſons or the like, may not, ſo long as it remain undivided, be given by one ſon without the aſſent of the reſt: the commentator does not conſider gift as forbidden, when there are no brothers who are coparceners and there are brothers and ſons with whom partition has been made. If it be aſked, whence *the limitation of* "immoveable" is obtained, *the anſwer is*, from the text of VYA'SA (Chap. II, v. VI). If it be *again* aſked, whence *the limitation of* "undivided" is obtained, *the anſwer is*, from the text of NA'REDA (VI). Therefore MISRA does not ſay, that a father may not give *any thing* without the aſſent of his ſons: as we ſhall hereafter ſhow.

"Do not ſubſiſt" (XVIII 3) denotes the nonentity of every gift (*that is, ſome do, and ſome do not, ſubſiſt*); ſuch is MISRA's meaning: and in the ſubſequent text (XIX 4) it is declared, that if thoſe three reſpectively (what is acquired by marriage &c.) be given with the aſſent of the wife, of the coheirs, or of the king, reſpectively, the gift has validity: for it is a rule, that things named in order, ſhould be referred reſpectively to the terms placed in ſimilar order; as in the example, he cuts a *D'hava*, and a *C'hadira* tree, with a bill, and an axe.

"ACQUIRED by marriage;" what is received at nuptials, on obtaining a bride. There the rule bears, that the aſſent of the wife is required, when the property is given away by the huſband; not, when it is employed in procuring raiment or the like for conſumption: ſince that would be a moral conſtruction of law. Civil law is founded on reaſon not on revelation *only*; for it may reſt on another poſſible foundation; accordingly VRĪHASPATI directs, that deciſions ſhall be made according to the reaſon of the law (XVII).

MISRA.

HERE the expreſſion, "at nuptials," is employed comprehenſively; for the rule bears, that even what is afterwards given with a declaration, "this is beſtowed on thee, that my daughter may be maintained with it," ſhould not be given away by the huſband, without the aſſent of his wife. What is given

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with a declaration of its uſes for the maintenance of the wife, becomes the property of the huſband concurrently with her; therefore it is fit, that the gift ſhould be made with her conſent. In other caſes his property is independent of her: what ſhould prevent a gift without reference to her conſent?

If it be ſaid, *the huſband's gift is in no caſe proper without the aſſent of the wife*, becauſe the text, "property is common to the huſband and wife," ſhows her title in the whole of his wealth; and ſhould not be otherwiſe explained, without an objection *exiſting to its literal interpretation;* that is denied, becauſe the wife's property muſt be inferiour, as it is ſubordinate to the huſband's; and the right, of perſons living under the control of others, cannot prevent the deveſting of property appertaining to the perſons under whom they live.

May not the wife's title ſubſiſt, although the thing be given away; for her property is not deveſted? It ſhould not be anſwered, the wife's property, being dependent on the huſband's, ſhould be conſidered as annulled when his title is transferred. Were it ſo, his right being deveſted by his death, and the property veſted in the ſons, their mother would not be entitled to a ſhare, in right of her former property, when they afterwards make a partition. *To this it is replied*, that the difficulty is removed by ſaying, the mother's title to a ſhare is not founded on her former property, but on poſitive texts; and if it be wiſhed to interpret the text according to the reaſon of the law, the veſting and deveſting of the property cannot be eſtabliſhed without *the ſupport of* an expreſs ordinance: but, under the authority of the text, and by the force of the poſſeſſor's will to make a gift, the deveſting of the huſband's property is accompanied by a transfer of the wife's. However the deveſting of his property by death or degradation is excluded from this conſideration. Thus muſt the law be interpreted.

According to the opinion of Ji'mu'ta-va'hana and others (who contend that the wife is not entitled to the eſtate of her huſband who leaves no male iſſue,) food and raiment *muſt* neceſſarily be given to her, although

quoted); the *Smr'iti*, which is founded on the reaſon of the law, relates to viſible effects, grounded on authority, other than *moral* precepts, but deducible from reaſoning: but, where the reaſon of the law does not appear, there, as the authority of it muſt of courſe be ſought, effects are ſuppoſed, which proceed from the *Vēda* alone, an authority independent of life; and ſuch effects, in ſome inſtances pure, in others ſinful, are unſeen *or metaphyſical*. If this text imply immorality, a difficulty would ariſe from the additional neceſſity of eſtabliſhing an unſeen *or moral cauſe*, contrary to the immorality declared to ariſe from thoſe ill actions, and independent of the declared effects of the moral cauſe mentioned. Such is the ſenſe of MISRA's remark. The unſeen *or moral conſequences* of irregular conduct are declared: by diſcriminating the degree of irregularity, crimes of ſeveral degrees reſult from one general expreſſion; penance muſt be performed accordingly, and puniſhment muſt be proportioned to penance: but, in this text, reaſoning, not morality, is ſhown. Such is MISRA's meaning: to expatiate would be ſuperfluous.

SHOULD not ſcripture be eſtabliſhed as the foundation of the ſyſtem of law, declaring it to be founded on ſcripture; but not independent of reaſon? Reaſoning is not obviouſly denoted by the text; therefore he ſays, civil law is founded on reaſon: but rules concerning lunar days, and the like, are abſolutely founded on ſcripture. How then is law called *Smr'iti*? Sounds, which were heard from the utterance of the ſupreme being, are called *Sruti*; they are the *Vēdas*; and theſe names are interchangeable. Words, which were delivered by holy ſages from recollection of the ſenſe, after forgetting the words revealed by the ſupreme being, or even while remembering them, are called *Smr'iti*. If recollection of the ſenſe of the *Vēdas* be not admitted as its foundation, how can it be called *Smr'iti*? The anſwer is, reaſon is not the *ſole* foundation of civil law; but ſcripture alſo, in ſome inſtances: accordingly a text of ſcripture concerning partition during the father's lifetime, is adduced by the holy ſage BAUDO'HA'YANA. But MISRA has ſaid, "it is founded on reaſon" becauſe reaſoning abounds. In the law concerning lunar days and the like, ſcripture abounds; and reaſoning is only ſometimes employed. Again; property is a thing founded on ſcripture; for, without it the veſting and deveſting of property could not be proved: hence, the convey-

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her husband's brothers succeed to the whole estate: that alone is her right, but she cannot claim partition with his brothers; for no ordinance *has authorized it:* and, since women are dependent on men, surely their property must be so likewise.

SINCE the husband's wealth is common to him and his wife, it is joint-property; and if it be given away by the husband, her share *nevertheless* subsists, as in the case of joint-property belonging to two brothers. This *again* is denied; *for in practice* that is considered as joint-property, in which there is equal right on both sides. Hence, even those, who contend for the equal dominion of a father and son over an estate inherited from the paternal grandfather, do not affirm, that the son's share in it subsists, if it be given away by the father alone; for he has not joint-ownership with the father. The term is derived from equality: but that estate does not equally belong to the father and son; for one is superiour. The expression, "equal dominion," is vague, intended to prevent the father acting *solely* at *his own* pleasure in the partition of the heritage: it is founded on connexion by birth, which common sense does not make equal: and it must be established, that the son's claim in right of affinity is included in the father's. Admitting with JI'MU'TA-VA'HANA dispersed property, *still* the son's right must be considered as the same with the father's, being referred to the same quarter. Hence in a partition made by the father, no share is given to a grandson, whose *own* father is living.

THERE is no dispute on the opinion of those, who hold that the text, which declares wealth common to the husband and wife, implies only the expenditure of his property in honouring guests, not a right vested in her. But it is irregular to interpret a text otherwise, without unfitness *in its literal sense:* and we hold it proper, that the wife's co-operation should be required in civil contracts, as in religious acts; under the text, "The wife is declared to be half the body of her husband, equally sharing the fruit of pure and impure acts" (Book V, v. CCCXCIX); and again, "Then only is a man perfect, when he consists of *three persons united*, his wife, himself, and his son" (Book V, v. CCLII 4).

"FOR that would be a moral construction of law" (gloss of MISRA above quoted);

quoted); the *Smṛĭti*, which is founded on the reaſon of the law, relates to viſible effects, grounded on authority, other than *moral* precepts, but deducible from reaſoning: but, where the reaſon of the law does not appear, there, as the authority of it muſt of courſe be ſought, effects are ſuppoſed, which proceed from the *Véda* alone, an authority independent of life; and ſuch effects, in ſome inſtances pure, in others ſinful, are unſeen *or metaphyſical*. If this text imply immorality, a difficulty would ariſe from the additional neceſſity of eſtabliſhing an unſeen *or moral cauſe*, contrary to the immorality declared to ariſe from thoſe ill actions, and independent of the declared effects of the moral cauſe mentioned. Such is the ſenſe of MISRA's remark. The unſeen *or moral conſequences* of irregular conduct are declared: by diſcriminating the degree of irregularity, crimes of ſeveral degrees reſult from one general expreſſion; penance muſt be performed accordingly, and puniſhment muſt be proportioned to penance: but, in this text, reaſoning, not morality, is ſhown. Such is MISRA's meaning: to expatiate would be ſuperfluous.

SHOULD not ſcripture be eſtabliſhed as the foundation of the ſyſtem of law, declaring it to be founded on ſcripture; but not independent of reaſon? Reaſoning is not obviouſly denoted by the text; therefore he ſays, civil law is founded on reaſon: but rules concerning lunar days, and the like, are abſolutely founded on ſcripture. How then is law called *Smṛĭti*? Sounds, which were heard from the utterance of the ſupreme being, are called *Sruti*; they are the *Védas*; and theſe names are interchangeable. Words, which were delivered by holy ſages from recollection of the ſenſe, after forgetting the words revealed by the ſupreme being, or even while remembering them, are called *Smṛĭti*. If recollection of the ſenſe of the *Védas* be not admitted as its foundation, how can it be called *Smṛĭti*? The anſwer is, reaſon is not the *ſole* foundation of civil law; but ſcripture alſo, in ſome inſtances: accordingly a text of ſcripture concerning partition during the father's lifetime, is adduced by the holy ſage BAUDO'HA'YANA. But MISRA has ſaid, "it is founded on reaſon" becauſe reaſoning abounds. In the law concerning lunar days and the like, ſcripture abounds; and reaſoning is only ſometimes employed. Again; property is a thing founded on ſcripture; for, without it the veſting and deveſting of property could not be proved: hence, the convey-

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ance and transfer of it being proved from the ſcripture generally, it has been eſtabliſhed by ſages, from the reaſon of the law, that effects bailed cannot be given away, that joint-property is unalienable without the aſſent of the other proprietors, and that ſeveral property may be alienated at the ſole pleaſure of the owner, and ſo forth.

" For law may reſt on another poſſible foundation " (gloſs of Misra above quoted) ſince the words of holy ſages are words of living *men*, they have not authority of themſelves it is true in reaſoning, that one alone has authority in the univerſe, HE, BY WHOSE WILL THE UNIVERSE IS GOVERNED But it does not follow, that the words of ſages have no cogency, for they are void of deception and other faults Hence the words of ſages, not cogent in themſelves, nor yet deſtitute of authority, derive it from another *ſource* It is not proper to affirm, this ſource to be the ſage's eye, ear, or other organ of ſenſe. Property and the like, which are things inviſible, future, and remote, cannot be apprehended by the eye, ear, or other organ of ſenſe Nor ſhould it be ſaid, that ſages ſee every thing with the eye of abſorbed contemplation, for it cannot be admitted, that any other, than God, ſees all things. It ſhould therefore be affirmed, that the ſyſtem of law has been propounded by legiſlators viewing the ſenſe of the *Vedas* elſe, there can be no other radical authority for the words of ſages A knowledge of the ſenſe of the *Védas* being eſtabliſhed as the foundation of the whole ſyſtem of law, wherever *a particular* rule may be grounded on a ſenſe deducible from the reaſon of the law, there another authority may exiſt, and it is not actually founded on the knowledge of the meaning of the *Vedas*. This ſhould be eſtabliſhed as the implied ſenſe of the term " reſt on " or be cauſed " a deciſion muſt not be made ſolely by having recourſe to the letter of written codes" (XVIII), if it cannot be made in conformity both with the reaſon of the law and the letter of written codes, the deciſion ſhould be made according to the reaſon of the law alone

What is received from the maternal grandfather, muſt not be conſidered as having deſcended from anceſtors, but as acquired by the man himſelf.

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" Be given with the assent of the wife &c." (XVIII 4). The gift should not be made without her consent. Is not that, which *must* be given with the assent of the wife, and which has been previously described by the term, " acquired by marriage," the exclusive property of the woman, and no wife appertaining to her husband? therefore, the husband having no power to give it away, what purpose is there in her assent?

XXIX.

VYA'SA:—WHAT shall be given *to a bride* at the time of her nuptials, with a declaration *of its use, made by the giver*, to the bridegroom, shall be her entire property, and shall not be shared by her kindred.

THOUGH it be the exclusive property of the woman, still the gift, *made* with her assent, is valid; for it is authorized by the owner: and this is implied by the expression, " with the assent of the wife, of the coheirs, or of the king." *To this it is answered*, were it so, it would be superfluous *to declare, that* what is acquired by marriage, *may be given* with the assent of the wife; for, in all cases, a gift made with the assent of the owner is valid.

IN the text of VYA'SA, bridegroom, in the dative, necessarily implies that he is the donee; that property is the bridegroom's, not the bride's: by declaring it her entire property, it is understood, that she has an interest in it, which implies, that a gift must be attended with her consent. This is denied; for another authentick text, quoted by JI'MU'TA-VA'HANA, shows, that the *legal* heirs of her exclusive property succeed thereto.

XXX.

VYA'SA: — WHAT, *indeed*, shall be given *at any time* to the husband in trust for *his wife*, the daughter *of the giver* shall enure to her use, whether her lord live or die; and, on her death, to the use of her issue.

HENCE, JI'MU'TA-VA'HANA makes it evident, that it is the bride's pro-

 perty.

perty It intends what is given to the bridegroom, with a declaration, " this shall be the bride's " not *what is given* without this declaration. " At the time of her nuptials " is mentioned illustratively, it is not a *requisite* condition, since the declaration *of its use* is the cause of *its becoming female* property. Therefore such a gift belongs exclusively to the woman but the construction of law, as delivered by MISRA, that " even what is received by an independent bridegroom, at the time of the nuptials, without such a declaration, may not be given without the assent of the wife," is incongruous. To this it is replied, what is given with a declaration, " this shall be the bride's," is her exclusive property, but in that, which is given to the bridegroom with a declaration, " it is my intention, that the bride's maintenance should be *secured* by this," the bridegroom has ownership, but with reference to the *consent of his* wife This is intended by MISRA, and consequently there is no inconsistency

BUT, if a declaration be made *in these words*, " this shall be the bride's," her husband is not the donee, and he should not be named in the dative It must not be argued, that the dative case denotes the agent's object, as in the example, " she sleeps with her husband " The object, *or intention*, " this shall be the bride's," has no relation to the bridegroom SRI CRISHNA-TERCA'LANCA'RA explains " what is given to the bridegroom,' what is delivered into his hands But others explain " declaration,' a notification that " it shall be the bride's property " consequently the gift is made to the bridegroom, but contemplates the property of the bride; and where the design of the gift is, that the property shall be the husband's in trust for his wife, it becomes her property, through the medium of his, and belongs exclusively to her by the authority of the text.

IN fact, the gift of every sort of property acquired by marriage, must, under this text, be made with *a precise* reference to the wife, as the assent of the king *is required* for *a gift of* arms, horses, elephants and the like, conquered in war and it may be affirmed, that the rule is assumed from the reason of the law grounded on the wife's interest *in the cha* The fulness of one opinion, (MISRA's, or the [illegible] should be thor[illegible] mined.

WITH the aſſent " of the coheirs" (XVIII 4); meaning undivided brethren and the reſt.

MISRA.

" OF the king" (XVIII 4). He, in whoſe army a man combats, is the *king or* lord: in giving wealth gained by valour, his aſſent is required. VA'CHESPATI-MISRA notices a diſtinction: the king's conſent is required for a gift of arms, horſes, elephants, and the like, gained by valour, or by victory in battle; for his ownerſhip is ſuppoſed: but *it is* not *required* for *a gift of* clothes or the like; for they are ſuppoſed to devolve on the conqueror's men. Others hold, that in regard to the ſurrender of his cities by the conquered king, and in regard to horſes and the like ſeized by the enemy and given by the victorious prince, the concurrence of the conquered king is required. VA'CHESPATI-MISRA does not accede to this laſt opinion; for he has not explained this contradiction.

" THE gift has validity" (XVIII 4): but not without the aſſent of the *wife*, of the coheirs, or of the *king*.

" HEIRS, *whether they be divided or* undivided &c;" brethren and others of right receiving the heritage of him, whoſe inheritance they take. MISRA ſtates the import of the term " divided;" although heirs have made a partition, their ſhares, if not ſeparated, remain in common, and are conſequently joint-property. In that caſe a ſingle parcener has no power to give, pledge, or ſell the whole. But, if all the effects be ſeparate, the act of a perſon, who is his own maſter, is valid. In effect this relates to caſes, where no partition *has been made*. It muſt be noticed, that, ſince thoſe *ſhares* appear virtually to be held in common, the ſenſe of the text ſhows that joint-property may not be given. CHANDE'SWARA, from the derivation of the term *(dáyam ádatté*, takes the heritage), explains *dáyáda* or *heir*, a ſon or the like (as the *Calpateru*, in a gloſs on the text of APASTAMBA expreſſes, " heir, ſon or the like;" and the author of the *Prachſa* alſo explains the term in the ſingular number). Conſequently he concurs with MISRA: thus " heir" *ſignifies* " ſon;" to the queſtion, " whoſe ſons?" the anſwer is, " his, from whom the eſtate has deſcended;" hence the brothers of the donee

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are virtually suggested by the terms of the text. Consequently all the sons of the original proprietor are equal owners, hence no one has power to give away the joint-property he has not the independent power requisite to the validity of his act. VA'CHESPATI-MISRA states this opinion of CHANDE'SWARA *in these words* "others hold, that the term heir chiefly intends "son, while the father lives, even a separated son has not power over the "immoveable estate: but what he has acquired by the acceptance of gifts, "and the rest of the seven modes of acquisition, he may give away." Consequently, while the father remains, sons, with whom no partition has been made, have not power over the immoveable estate, and while he lives, they are not uncontrolled in receiving, blessing, and dissipating property. The texts have the same foundation but in that text the dependence of undivided heirs, in regard even to moveable effects, is further denoted, and it shows, that separated sons have not power over immoveable property

SOME expound the phrase, "heirs or sons have a lien equally" (XVIII 5), *they are owners equally with their father according to it appears from the* text of YA'JNYAWALCYA (XIII), that the father has not power to give away immoveable property without the assent of his sons, and that is actually declared by the legislator (XIV) and this text, they hold, to have the same import

CONCISELY the settled rule is this. joint-property, which has descended from ancestors, can *only* be given away with the consent of the other parceners, divided moveables *may be alienated* at the owner's pleasure, but immoveables, with the consent of those, who were parceners before partition in the case of wealth acquired by marriage, the assent of the wife is requisite, of other property, acquired by a man himself, a gift may be made at his own pleasure Such is the opinion of CHANDE'SWARA and also of VACHESPATI-MISRA but the assent of the wife is only required for what has been given to the bridegroom with a declaration "let this be the bride's," and not in every instance of propert acquired by m and there is this difference, *according to the la* the assent of the brethren is not required for a gift of d moveable pr In the former opinion there is *also* this differe has desc m

anceſtors muſt *only* be given with the aſſent of ſons; and ſo muſt immoveable property acquired by a man himſelf.

CHANDE'SWARA has not clearly explained, that, if the ordinance be infringed, the gift is void. In the want of an able expoſition on the words "the gift has validity," (XVIII 4), it is inferred, that the gift is not valid *in other caſes* It is the opinion of VA'CHESPATI MISRA, that the gift is void; for in a gloſs on "divided or undivided" (XVIII 4) he ſtates, "but after partition, a gift made by an independent perſon is valid"

JI'MU'TA-VA'HANA ſays, "a gift made by the owner, not diſqualified by "infanity or the like, is in no caſe void, the gift is valid to the amount of "his own ſhare even of landed property." The wife's gift of property belonging to the huſband, to whom ſhe is united, has not been conſidered by any modern author the diſcuſſion *of this point* may be ſeen in book the fifth on inheritance.

THE text, "at his pleaſure he may give what himſelf acquired" (XVIII 3), is not reſtricted to property other than immoveables but it applies to whatever *the owner* himſelf acquired, whether moveable or immoveable; for there is no authority for any reſtriction. Such is CHANDE'SWARA's opinion: *but it may be objected, that a limitation might be deduced from the text* cited by JI'MU'TA-VA'HANA and others (XIV).

DECLARING valid the gift of property acquired by a man himſelf, or inherited from his father (XVIII 2), the ſage declares the moral purity of gift, "at his pleaſure he may give &c" (XVIII 3). Conſequently there is no reference to the aſſent of any perſon, and a gift actually made is morally pure. But of property acquired by marriage, or inherited from anceſtors and not divided, the whole ought not to be aliened. Such is the ſenſe *of the text* (XIX 3). For, the bride having ownerſhip in what is given with a declaration of her property, the bridegroom is not independent in regard to it but, if it be given with a declaration only of its uſe for her maintenance, a gift *of ſuch property* made by the huſband is valid. For this purpoſe it is ſaid, not every gift ſubſiſts, *or the whole ought not to be aliened* (XVIII 3). In re-

gard to what has descended from an ancestor and is undivided, a gift of the whole made by one parcener is not valid, but the gift of his own share is good in law. The sage declares the form of validity in gifts (XVIII 4). the whole property acquired by marriage, or inherited from an ancestor, given with the assent of the wife, or of all the coheirs, is a valid gift since the king's favour concurs to the ownership of property acquired by valour, even a trifle given without his consent is not a valid gift, for without his consent the occupier has no independence. Such is the sense of the text and that is proper, because the king maintains the army for the sake of victory in war, hence what is conquered by the troops, of right belongs to the king; else, the ownership of territory conquered by his forces would be shared. Or what distinction is there in respect to clothes, horses and elephants, territory, and the like? As to what is gained by desperate valour, as well as by valour *generally* (Book V, v CCCLX), even there it appears, that the king's assent is requisite to enjoyment, to gift, and the like. But the king, any how informed, gives immediate mental assent instances of *formal* consent are not much seen in practice.

In regard to immoveable property inherited from an ancestor, the assent of brothers and the rest, who, though separated, may ultimately be entitled to a partition of it, is the cause of moral purity by the gift but the donation is not void without their assent, for that is not denoted by the text. As to the inference, that the gift is void, because disability is denoted by the expression, "has no power" (XVIII 5), it is inadmissible, for the disability may be otherwise effected thus, when an heir, though divided, forbids the gift or sale of immoveable property inherited from an ancestor, the occupier cannot give it in contempt of that prohibition Such is the sense of the words, "has no power," and practice also conforms therewith

A GIFT of immoveable property, made by a father without the assent of his sons, is valid, but he should be amerced, and must perform penance. For their equal dominion is propounded under the title of inheritance.

XXXI.

YA'JNYAWALCYA:—OVER land a[illegible] by the gr[illegible]

over a corrody *out of mines or the like, ſettled on him and his heirs by the king,* and over ſlaves employed in his huſbandry, the father and the ſon, *when the grandfather dies,* have equal dominion.*

AND that is pertinent as it relates to inheritance; elſe, ſons could not have ownerſhip while the father lives: but to affirm, that the right is ſimilar, would be *mere* childiſh prate. At preſent, the title becomes ſimilar after partition, as is ſhown in book the fifth on inheritance; and the texts of VISHNU and others confirm it: but a gift by a father under the impulſe of anger, or the like, is not valid. Such is the modern opinion: no one has expreſsly ſaid, that the immoveable patrimony, given without the aſſent of ſons and the reſt, is not a valid gift. Even the king ſhould not, in breach of the law, give immoveable property for civil purpoſes; but he may give land or the like for religious uſes: ſo may any other owner give away his own property for ſuch uſes; it is not proper, in this inſtance, to diſcriminate moveable and immoveable property: the family, however, ſhould not be diſtreſſed, as appears from a text cited by JI'MU'TAVA'HANA (XI).

FROM the rule, that 'evil is not the conſequence of an act producing good, and conſiſtent with the *Védas*, provided the act be different from incantations to deſtroy enemies and the like', ſome infer, that ſin is the conſequence of a gift of property, when there was no exceſs above the *neceſſary* ſubſiſtence of the family *(this being comprehended in that vague exception)*; hence the rule of deciſion in this inſtance is ſimilar to that which regulates gifts for civil purpoſes: but thoſe, who are able ſpeedily to acquire wealth, perform the *coſtly* ſacrifice *Viſwajit* † or the like.

XXXII.

YA'JNYAWALCYA:—LET the acceptance be publick, eſpecially of immoveable property: *and* delivering what may be given and has been promiſed, let not a wiſe man reſume the donation.

* Book V, v. XCII. † MENU, Chapter XI, v. 75.

"PUBLICK;"

" PUBLICK,' in the presence of witnesses; let him so act, that he may not afterwards say, " this was not given by me, but intrusted for use."

" ESPECIALLY of immoveable property " a gift of land, without the assent of sons and the rest, is not consonant to duty therefore arbitrators may think it has the appearance of *a contract* not made · kinsmen, even though divided, may litigate, and absolute property is ascertained by possession for twice the period which confirms *a right to* moveable effects. these and many other obstacles exist in regard to land, it is therefore said, " especially *the acceptance* of immoveable property."

A WRITTEN contract of gift is proper, in the want of that, the donation should be attested The contract should be written with the donor's own hand, and, in these times, it should be witnessed else, a litigant, averring that it was obtained by compulsion, may render the writing vain The witness should be a kinsman, a publick officer, or other principal person, for an authentick text declares,

XXXIII

LAND is conveyed by six formalities, by the assent of townsmen, of kindred, of neighbours, and of heirs, and by the delivery of gold, and of water.

LITERALLY " of the town," meaning the rational inhabitants of the place. " Kindred," persons who might eventually be entitled to the heritage after the giver's *male* issue, namely, daughter's sons and the rest " The lord,' the king, or his substitute, or any king's officer employed for the purpose " Heirs," sons and the rest *Land is conveyed* with the assent of these, that is, with their acknowledgement of knowing the gift, or with their attestation But the author of the *Mitacshara* says, the gift should be made after they have assented by " town," according to him, is meant the king's officer residing in the town his assent is required to ascertain the boundary, else, the gift may be *either* void or immoral, *(according to the difference of opinion on that point.)* because it may include the joint-property of others By " kindred," *according to him*, are meant brothers and the rest without

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their assent, a gift is defective, as already shown. By "lord" *is* meant the king; his assent is required because subjects are dependent (XV 2): in a gift of land, the assent of him, by whose will it is held, and by whose favour the encroachments of others are prevented, is indeed proper. By "heirs" are meant sons; their assent is required by the text cited in the preceding section (XIV). "A delivery of gold" with land, for the purpose of showing a complete gift, is proof of donation. "Water" is delivered with *tila* and *cuśa*, for the auspiciousness of the gift. And thus, a donation of immoveable property for religious uses is excellent; but, for civil purposes, a gift of immoveable property should not be made by prudent men: this is a settled rule.

By proceeding so far, great difficulty would arise in gifts of landed property for civil purposes. But, when the townsmen and the rest are witnesses to the contract, there is no controversy. If, by accident, they be not witnesses, their assent should be noticed in the deed of gift: and the written contract should be made in the same form, with a written contract of loan; for the directions of YA'JNYAWALCYA are general (Book I, v. XVI).

The form of the writing should be this: in place of the creditor's name, let the donee's be written, and the names of his father and so forth, to prevent a mistake of the person; next should be written, "this deed of gift, *as follows:* for the sake of heaven I give unto thee, with gold and water, this land, measuring so much, and exceeding the *necessary* subsistence of my family, *to be* held for such a period." If the townsmen and the rest be not witnesses to the deed, or if they be not present, the instrument should express, "with the approbation of the king, and with the assent of sons," and so forth. Though the consent of sons be not required in a gift for religious purposes, it should nevertheless be noticed, (on account of the difficult publicity of a gift of immoveable property, which has been remarked by sages,) that himself and his descendants may not claim ownership. The year, month, fortnight, and day should be noted; and the donor should subscribe his name with his own hand, first writing the designation of his father and so forth. The names of witnesses, informed of the whole contents, may be subscribed by another hand after asking *their permission*; but the writer's name *must be added*. If any party

be unable to write, *the inſtrument* ſhould be ſubſcribed by a ſubſtitute: but the donor, if unable to write, makes ſome mark, as a double line, or the like. Such is the practice.

A CONTRACT written by the party himſelf, even though not atteſted, is *good* evidence: but, if atteſted, it is indiſputable; and therefore it is proper to make it *in that form*. But if there be not the atteſtation of kinſmen and the reſt, then it muſt certainly be queſtioned by the king. Such ſhould be the written contract of gift for the whole of joint-property: in grants by a king there is ſome difference.

XXXIV.

YA'JNYAWALCYA:—LET a king, having given land or aſſigned a corrody, cauſe his gift to be written, for the information of good princes, who will ſucceed him,

2. Either on prepared ſilk, or on a plate of copper, ſealed above with his own ſignet. Having deſcribed his anceſtors and himſelf,

3. The quantity of the gift, with the penalty of reſumption, and ſet his own hand to it, and ſpecified the time, let him render his donation firm.

"A CORRODY;" the gift of a thing aſſigned on a fund. "For the information of good and juſt princes;" not of unjuſt princes, for they indeed violate even written grants. How ſhould the writing be framed? He ſays "on prepared ſilk," or (becauſe that is not durable) "on a plate of copper." "The gift;" the land or thing which is granted. *Having deſcribed the* quantity of it; "its quantity ſo much." Declaring the conſequence of reſuming a gift. Setting his own hand to it; "what is here written has the aſſent of me, ſon of ſuch a one:" with ſuch words ſubſcribed, and with the date affixed; that is, the date of his reign, or the time of an eclipſe of the moon or the like. By the aſſent of the king the donation ſhould be rendered firm.

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THE consequence of resuming a gift is thus shown;

XXXV.

Ádi purána: — THE giver of land remains in heaven sixty thousand years; but he, who resumes it, or assents *to the resumption*, shall so long inhabit a region of torment.

IN the *Dipacalicà*, a corrody is thus explained: the gift of a future thing by a previous agreement, in this form, "I will give a hundred *suvernas* every month of *Cárticà*," or, "out of this mine, or this village, I will annually give a hundred *suvernas*," or "I will monthly give one *suverna*."

HOW can there be property in a future thing; for it has not, at that time, a place on which to rest; and the act of volition ceases after creating the right. Neither is *it true, that* a future thing *is* not given, but only promised: were it so, after the death of that king, on the accession of his successour, the corrody would be lost. Nor should this be deemed admissible; for it is inconsistent with *the practice of* respectable men. *To this it is replied*, that the past existence of volition is the cause of *this* property: hence the *Bráhmana* has a right to the future thing; and, should another king resume *the grant*, he falls to a region of torment for *seizing holy property*. *The gift of a corrody is at once completed; but* it should be inserted in the written grant, "I will give a hundred *suvernas* every *Cárticà*."

IF property is not created in a future thing, why is the partition of a corrody discussed? The word itself justifies its futurity and implies volition; and the term "gift," is extended to corrody, for the purpose of confirming it, like the sale or transfer of a debt. The grant of the pension should be prefaced with these words; "this written grant of a corrody."

"FOR the information of good princes:" else, a prince, though good, might resume it through ignorance or doubt; a bad prince would *probably*, resume it knowingly. To denote this, the epithet good is added. This is meant generally. A consequence of the grant is the spreading of the donor's

fame:

fame: accordingly, an authentick text, cited by GO'YI'CHANDRA, expreſſes.

XXXVI.

So long as his fame, unforgotten, pervade the earth and air, ſhall the generous man remain in a celeſtial abode.

IT is related in the *Mahábhárata*, that, having performed many virtuous acts, and enjoyed heaven during a very long period, the king INDRADYUMNA, falling *from heaven* when almoſt all his contemporaries were dead, though *the merits of* his virtuous deeds were yet unexhauſted, aſked of the ſage MARCANDE'YA the ſtory of his fame; but he, though he had lived long, being unable to relate it, referred him to one born before himſelf; that perſon, alſo unable to relate the ſtory, did the ſame: this ſeries *of reference* being continued, a turtle, in the lake of the DA'NAVAS, rehearſed the whole hiſtory of INDRADYUMNA. By this his fame, before extinguiſhed, again blazed, and by its own effulgence cauſed the king INDRADYUMNA to reaſcend to heaven.

As prepared ſilk is not very durable, a plate of copper is directed. According to the thing to be given, a particular leaf *or plate, may be uſed.* Copper is here mentioned for its purity and auſpiciouſneſs: this is meant generally, comprehending ſilver and the like.

" HIS own ſignet:" a thing uſed to ſtamp, at once, the whole of the letters, in an uniform mode; the letters may be thoſe, which expreſs his name, or others; but ſuch, as cannot be uſed by another perſon.

" HIS anceſtors:" *the race from which he ſprung;* his own anceſtors born of that race: for the purpoſe of ſpreading their fame with his own, and to prevent the miſtake of another perſon bearing the ſame appellation.

" HIMSELF:" ſince it is cuſtomary to inſert the name of the donee and the reſt, and ſince his own appellation is actually inſerted from the neceſſity of

obſerving

obſerving the form of a written contract of debt, or is inſerted, becauſe it is engraved on the ſeal, ſomething more muſt be *here* meant; and that appears to be his own titles of honour: though it be improper to exalt and celebrate himſelf, ſuch praiſe is not improper from his own dependents. Thus ſome explain the text; but others hold, that, ſince he is dignified by ſpiritual perſons with titles of honour, it is proper to inſert them.

"DESCRIBING the quantity" of land, in this form, "land meaſuring ſo many cubits." In fact its deſcription by time and place ſhould be inſerted; however, that is not ſhown in the text of YA'JNYAWALCYA (XXXIV), but *is inferred* from practice: it is uſual to inſert the *name of the* town and the like.

"THE penalty of reſumption:" the conſequence of reſuming what has been given, as has been mentioned; and another authentick text, *cited* in the *Dipacalicà denounces the penalty.*

XXXVII.

BUT he, who ſeizes the ſubſiſtence of prieſts, whether given by himſelf or by another, is born a reptile in ordure for ſixty thouſand years.

IT is ſhown by texts cited in the *Ecádeśi tatwa* (XXXVIII and XXXIX) that a man ſeizing holy property is guilty of a *crime equal to* the murder of, a prieſt; and, ſeizing the property of a *Cſhatriya* and the reſt, *he is guilty of a crime equal to* the murder of a ſoldier and ſo forth.

XXXVIII.

Váyu purána:—SINCE property is called external life, he, who takes it, flays the owner.

XXXIX.

SANC'HA:—HE, who reſumes the ſubſiſtence, of any man, of what tribe ſoever, muſt perform the expiation preſcribed for killing a perſon of that tribe.

XL.

HA'RI'TA:—HE, who gives not what he has promiſed, and he, who takes back what he has given, ſinks to various regions of torment, and ſprings again to birth from the womb of ſome brute animal.

THESE, and many other conſequences from reſumption of gift have been propounded; for the ſake of illuſtration, a little has been inſerted *in this place*. Many fruits, *accruing* from the gift of land, have alſo been mentioned by ſages.

XLI.

BUT he, who accepts land, and he, who beſtows it, performs pure acts, and ſhall certainly go to a region of bliſs.

AND "the giver of the land obtains landed property,"* and ſo forth; but that is not mentioned by YA'JNYAWALCYA.

As the direction, for the king's ſubſcribing the grant with his own hand, may be fulfilled in any words, ſome explain it, that he ſhould only write with his own hand, "ſo much land given to ſuch a perſon." They think it ill reaſoned *to require* the words, "this deed of gift," as practiſed by his officers.

"THE date:" 'his own' is brought forward; conſequently the ſenſe is, the king ſhould execute the deed of gift dated by the year deſcribed from the reigns of princes of the ſame dynaſty. His titles, and the denunciation againſt the reſumption of gift, *ſhould* be placed above, and on the left ſide; for it is cuſtomary to put the name of the giver on the right ſide. Let him render his donation firm, that it may have long duration. Thus ſome explain the text (XXXIV).

A DEED of gift, or the grant of a corrody, ſhould be thus framed in the

* MENU, Chapter IV, v. 230

the

form directed for a written contract of debt; it is separately mentioned for the additional direction of a seal and the like. This gloss is grounded on the *Dipacahca'*.

SINCE the priest, as well as the king, has property in the soil occupied by the subject, (for he is declared by MENU to have dominion over the human species, Chapter II, v. XXIV), and since the priest's lordship of the soil is proved by the practice delivered in the system of law (Chapter II, v. XIII), and since MENU declares it (XLII), and since the priest is entitled to a share in the produce of agriculture (XLIII), how is it again bestowed on him?

XLII.

MENU:—THE *Bráhmana* eats but his own food; wears but his own apparel; and bestows but his own in alms: through the benevolence of the *Bráhmana*, indeed, other mortals enjoy life.

XLIII.

PARA'S'ARA:—GIVING a sixth part to the king, a twenty-first to deities, and a thirtieth to priests, *a husbandman* is exempt from all sins *incident to agriculture*.

To the question above stated it is answered, that *dominion* is expressed in a general sense; as a priest is not qualified for war, he has not superiour ownership: and even admitting the priest's lordship of the soil, a gift may be *nevertheless* made to him for the purpose of entitling him also to receive the share due as revenue to the king.

MENU forbids the levying of revenue from a field occupied by a priest; for otherwise the text, quoted in Chapter II (v. XIV 7), would be unmeaning. But subjects, even though residing in land appertaining to a priest, must be protected by the king; and the fines imposed on them should be received by the sovereign.

If ſome river be deſcribed as the boundary, and the quantity of land be ſpecified, then, ſhould the river encroach on it, the loſs falls on the prieſt, becauſe his land is deſtroyed; as it is his loſs, if gold received by him be ſtolen by robbers. But if the river, aſſigned as the boundary, ſhould recede, the land gained by alluvion belongs to the king; becauſe the gift did not intend that land, and it exceeds the quantity *ſpecified*. But where the quantity is not ſpecified, and the grant expreſſes, "the land as far as the river is thine; what is carried away by the river is thy loſs; what is left by the river is thy gain;" then the loſs or the gain, *whichever it be*, is the prieſt's.

It muſt be conſidered, that, if preſent volition, by its privation, * become the cauſe of future property in a future thing, preſent volition, by its privation, may alſo become the cauſe of future property in a preſent thing: as in the caſe of a gift, in this or other form, "this field, belonging to me, ſhall be thine after my death," the act of volition, which conſtitutes gift, is paſt at that very time. The increaſe of purity, *attainable by gift*, *is gained on* that *day which is* hallowed *by the donation*: but *the property of the giver* is not deveſted; nor *is it* veſted *in the donee*, until after *the giver's* demiſe. His donation is indiſputable, becauſe it does not differ from relinquiſhment veſting property in another, after deveſting his own property. It ſhould not be objected, that the paſt exiſtence of volition is not ſeen to be a cauſe of property. It is neceſſary to eſtabliſh it in the caſe of corrody; and authors admit the gift of a future thing.

When a debtor pays the debt, which he has contracted, by *aſſigning* ſome thing which will exiſt on a ſubſequent day, then, the debt being acquitted on that very day, intereſt ceaſes; and that future thing becomes the property of the creditor, and cannot be taken by another. A debtor, deſiring to conciliate the regard of his creditor, may voluntarily add, and give, a quarter, or half of that, and ſo forth, to a creditor eager for intereſt. In this caſe the form of the writing *muſt be regulated accordingly*: if Ya'jnyadatta, having borrowed ten *ſuvernas* from Devadatta, on the tenth day of *Aſſadha*, diſcharge *the ſum* on the eleventh day with *an advance* of a quarter,

* Alluding to the relation between cauſe and effects.

the

the form of the writing is this, " I, having received a loan from thee, on the " tenth day of *Aſhâdha*, (to diſcharge that together with intereſt voluntarily " ſtipulated and amounting to a fourth part of the principal for a ſingle day) " do give unto thee grain to the value of twelve *ſuvernas* and a half, at the " *current* price of the month of *Pauſha*, to be received from the produce of this " field in the preſent year." If the produce of ſeveral years be aſſigned, it ſhould be thus ſtated, " from the produce of this field, for ſo many years." But if the writing bear, " for the preſent year," and grain be not produced that ſeaſon, the amount ſhould again be made a debt; for it is not in fact diſcharged: the will to transfer property has alone paſt, but the creditor has obtained none; therefore the debt muſt be again paid. Where a debtor, intending to pay the debt when due, has carried the ſum from his own houſe, with the will that it ſhould become the creditor's property, but in the mean time the money is loſt by accident, as in this caſe it muſt be paid again; ſo, in the other caſe likewiſe. For there is equally a want of delivery; and according to VA'CHESPATI BHATTA'CHA'RYA, there is an equal want of property. The payment is complete on actual delivery; not on a mental relinquiſhment only.

If he receive a loan from another, pledging to him the produce of that field, then the laſt creditor ſhall have the ſurplus produce; he does not in this caſe take a ſhare. If there be no ſurplus, the debt is ſimilar to one unſecured by a pledge; and the laſt creditor ſhall be paid from other aſſets; for he has no pawn. But, if the prior contract were an hypothecation, then, according to RAGHUNANDANA, the firſt creditor muſt obtain his principal and intereſt by any other mode whatſoever, and relinquiſh the pledge: accordiog to other opinions, the laſt creditor only ſhall take the produce; but the firſt creditor ſhall receive intereſt, from the date of the ſecond contract, at the rate of two in the hundred, or the like; for his pledge was loſt to him on that date. This, and other points may be determined from a man's own judgment.

CA'TYA'YANA declares, with a diſtinction, what has been ſaid by YA'JNYAWALCYA, that what has been promiſed, ſhould be given (XVI).

XLIV.

CA'TYA'YANA:—He, who delivers not a preſent which he has

promiſed to a prieſt, ſhall be compelled to pay it as a debt, and incurs the firſt amercement.

By this expreſſion, "as a debt," even beating and the like are permitted; but it is incompatible with common ſenſe, that the claimant ſhould beat debtors of the ſacerdotal claſs: it appears therefore, that the king ſhould employ *compulſory* means for the recovery of the debt. In fact he may compel payment by mild remonſtrance and the like: it is mentioned to ſhow the abſolute neceſſity of payment. Prudent men do not make *abſolute* promiſes; but, intending to give any thing, they ſay, "God willing, the purpoſe ſhall be accompliſhed."

From the mention of a prieſt in this text, ſome lawyers doubt, whether it relate not to the promiſe of a gift for religious uſes. But that is not right; for, in the caſe of a promiſe for civil purpoſes, the delivery of the gift is alſo neceſſary. It has been declared, that, in the caſe of a promiſe for ſuch purpoſes, what has been promiſed is unalienable (IV 2).

XLV.

Matſya puráṇa—If a man give not what he has *legally* promiſed, let the king fine him one *ſuverna*, or *eighty* ractikas *of gold.*

The contradiction, between the fine of one *ſuverna* and the firſt amercement (XLV and XLIV), ſhould be reconciled by diſtinguiſhing the caſe according to the virtuous or vicious diſpoſition of the party.

Yá'jnyawalcya has ſaid, "let not a wife man reſume *the gift*" (XXXII); there reſumption is of two kinds, refuſing to deliver what has been given, and taking it back after delivery; the fine is the ſame, for they are *like* a pair of horſes coupled in one yoke: and no other fine has been mentioned. Há'rí'ta declares the offence equal (XL and XLVI).

XLVI.

Há'rí'ta:—A promise *legally* made in words, but not performed

formed in deed, is a debt of conſcience both in this world and the next.

" VARIOUS regions of torment" (XL); the hells named *Raurava, Mahá-raurava* &c. * What is promiſed in words expreſſing, " I will give," but not actually given, is a debt (XLVI). How can it be a debt; for it is received from him by reaſon of a promiſe, *not by reaſon of a loan?* The legiſlator replies, it is a debt of conſcience. From the words, " in this world," it appears, that payment ſhould be enforced by the king; from the expreſſion, " in the next world," it appears, that the promiſe-breaker ſinks to a region of torment. Some infer from the mention of debt, and from the expoſition on a text *cited in Book* V, at v. CXI, (to thoſe, to whom payment has been promiſed by the father,) that what has been promiſed, ſhould be ſo paid by his ſon.

ALL this ſuppoſes a promiſe of what may be given; but it does not apply to the promiſe of what is unalienable. Under the directions for an amercement where ſuch property is given away, the king ſhould not impoſe a fine, *at the ſame time* compelling the performance of an undue act; nor ſhould he omit to puniſh ſuch an act. Therefore half the amercement for giving what is unalienable, is incurred by promiſing what ſhould not be given; or the king ſhould compel the man to pay as much as he has promiſed, but has not delivered: two puniſhments exiſtiog for the ſame offence, the lighteſt ſhould be preferred.

IN ſome inſtances it is directed not to give what has been promiſed.

XLVII.

GO'TAMA: — A MAN ſhall not give even what he has promiſed, to a perſon, whom the law declares incapable of receiving.

HIS want of religious qualification is here the cauſe of his not being entitled to the gift. *Viváda Retnácara* and *Viváda Chintámeni.*

* MENU, Chapter IV, v. 88.

XLVIII.

XLVIII.

MENU: — SHOULD money or goods be given, *or promiſed as a gift*, by one man to another, who aſks it for ſome religious act, the gift ſhall be void, if that act be not afterwards performed:

2. If the money be delivered, and the receiver, through pride or avarice, refuſe *in that caſe* to return it, he ſhall be fined one *ſuverna* by the king, as a puniſhment for his theft.

MONEY or goods given, or promiſed, by one man, to another who aſks it for a ſacrifice, ſhould he not afterwards apply it to that purpoſe, ſhall be taken back, if given; and ſhall not be delivered, if promiſed *only*.

CULLU'CABHATTA.

IF the donor give money to a prieſt for a ſacrifice which he himſelf requires, and the prieſt, not performing that duty, apply it to his own uſe, at his own pleaſure, then the money may be withdrawn: but it muſt not be reſumed, if the man, aſking it *in theſe words*, "I perform a ſacrifice for myſelf, give me *this* money or *theſe* goods," and receiving the money or goods, do not perform the religious ceremony. Thus ſome interpret the law: but that is not ſatisfactory; for his aſking it would not be the conſideration. Therefore the conſtruction is this; 'to another, who aſks it for ſome religious act;' that is, to a perſon who aſks it, *at the ſame time* ſaying, "I will perform an act of religion."

ACCORDING to CULLU'CABHATTA, the ſenſe of GO'TAMA's text is, "what he has promiſed to a perſon not qualified on religious *grounds*;" according to the *Retnácara*, it is, "promiſed to a perſon diſqualified on religious grounds." Both ſhould be admitted; for a perſon not qualified, *or diſqualified* on religious grounds, is incapable of a gift for religious purpoſes, ſince texts declare, "marble tranſports not marble *over the deep*;" and again, "*wealth ſhould not be* diſtributed among women, nor among ignorant or diſhoneſt men:" and this muſt be underſtood of caſes, where religi-

ous

ous qualifications were fuppoſed at the time of the promiſe; as will be mentioned (LXII 3). But if wages, or the like, be the motives of the gift, the donor muſt deliver it even to a man not qualified on religious grounds.

THE circumſtance of his not applying what has been promiſed, to the religious uſe *intended*, may be known by *publick* report; for inſtance, ſome perſon declares, "this man, taking money or goods on this account, gives it to a harlot." If the receiver do not *in that caſe* ſurrender what has been given, or if he forcibly take what has been promiſed, he ſhall be fined one *ſuverna* by the king; and ſhall certainly be compelled to reſtore the thing. "As a puniſhment for his theft;" ſince it is thus declared, that he ſhall be puniſhed as a thief, *it does not appear* that he ſhould be made to reſtore it by mild remonſtrance and the like.

ARTICLE II.

ON VALID OR IRREVOCABLE GIFTS.

XLIX.

VRĬHASPATI:—THINGS once delivered on the following eight accounts cannot be resumed, as wages, for *the* pleasure *of hearing poets or musicians and the like*, as the price of goods sold, as a nuptial gift to a bride *or her family*, as an acknowledgment to a benefactor, as a present to a worthy man, from natural affection, or from friendship.

" As wages," as a recompense paid for work performed: so CHANDE'SWARA, with whom MISRA concurs. Sacrificial fees might, according *to this exposition, be deemed wages, but the grounds*, on which they are not considered as such in forensick affairs, may be learned under the title of nonpayment of wages or hire.

" FOR pleasure," for *the gratification of seeing* dancers and the like MISRA and CHANDE'SWARA.

" As the price of goods," paid to the vender. " As a nuptial gift or gratuity," delivered to the person who gives the bride, so explained by MISRA and CHANDE'SWARA a nuptial gratuity is paid at an *Asura* marriage,* and the pair of kine delivered at an *Arsha* marriage, though not *strictly* a gratuity, is comprehended in this term " As an acknowledgment to a benefactor," in return for benefits received for instance, a man, not receiving wages, but from a motive of friendship, by his strength or abilities has accomplished some business for any person, what this person gives him, *is an acknowledgment to a benefactor*

" As a present by a worthy man" versed in the sense of the scriptures, given by him for religious purposes to a *Brâhmana* So MISRA and CHAN-

* See [illegible]

DE'SWARA. It is mentioned incidentally, leſt *gifts for religious* purpoſes ſhould be reckoned in the number of revocable gifts: but NA'REDA does not ſpecify a preſent by, *or to*, a worthy man. His text will be cited (L).

"FROM affection" towards ſons and the reſt; or from kindneſs to a friend.
MISRA.

OR "worthy" may be interpreted the ſtate of worthineſs; what is given to a ſtranger endued therewith, though no benefit ſhould have been received from him, *is a preſent to a worthy man*. "Affection;" kindneſs, friendſhip, and ſo forth; what is on that account given to a friend: *and the laſt term of the text may be interpreted* tender regard, *inſtead of friendſhip*; what is on that account given to ſons and the reſt. Theſe three terms are alſo familiar in rhetorick, as names for love.

L.

NA'REDA:—THEY, who know the law of gifts, declare, that things once delivered as the price of goods ſold, as wages, for *the* pleaſure *of hearing poets, muſicians or the like*, from natural affection, as an acknowledgment to a benefactor, as a nuptial gift to a bride *or her family*, and through regard, cannot be reſumed.

BY this *is* declared the ſeven fold diſtinction of valid *or irrevocable* gifts: it has been already ſaid, that ſuch gifts are of ſeven ſorts (*II 3*).

"FROM natural affection, and through regard:" in theſe, worthineſs may be comprehended. Therefore the eighth diſtinction, noticed by VRIHASPATI, *is* not excluded. Or a preſent *to* a worthy man may intend a gift for religious purpoſes, not mentioned by NA'REDA, becauſe he had premiſed civil donations: "in civil affairs the law of gift is four fold" (*II 2*). It ſhould not be objected, that preſents for religious purpoſes are *ſubject to* civil cognizance; elſe how could the king compel delivery? The gift alone is religious; delivery is *a matter of* civil *cognizance*. Then *the law, concerning* what may not be given and the like, ſhould be admitted in the caſe of gifts for religious purpoſes?

poſes? In ſome inſtances it may be admitted; in ſome, it may be inconſiſtent with the reaſoning; in ſome, it may contradict *expreſs* laws.

MISRA, conſidering kindneſs as influencing every gift, reduces the diſtinctions to ſeven. But CHANDE'SWARA explains "*a gift* from natural affection" (XLIX), a donation to ſons or the like, "through regard," for religious purpoſes; and this, he adds, is intended by VRĬHASPATI in the expreſſion, '*a* '*preſent* by a worthy man: not diſtinguiſhing regard and kindneſs from pleaſure, NA'REDA declares ſeven ſorts; and VRĬHASPATI, diſtinguiſhing them, 'propounds eight ſorts; thus, there is no inconſiſtency: or they may be reconciled by ſaying, it is not implied, that one *text* curtails the other.' His meaning is, that, ſince NA'REDA mentions natural affection in addition to regard and kindneſs, the number of ſeven *ſorts* is complete: but as this might ſeem unſatisfactory, diſparaging VRĬHASPATI, who has not ſpecified natural affection *by the ſame term*, he ſubjoins another *mode of* reconciling *the texts*, "it is not implied &c." that is, NA'REDA's mentioning ſeven ſorts does not imply an excluſion of others; and VRĬHASPATI's diſtinctions *are comprehended* in the ſeven ſorts of irrevocable gifts. An *ample* expoſition of theſe opinions would be a mere diſplay of ſkill; it is not of much uſe to the thorough examination of the ſubject.

A NUPTIAL gift or gratuity is a general term, and may comprehend what is now given to a bridegroom on his marriage to the daughter of a *Rá'dhíya Bráhmana*.* Even a nuptial gift of money, received from the kinſmen of a bridegroom, in honour of anceſtors, is taken by the parent, who maintains the boy: ſuch is the cuſtom. But land and the like, received for the maintenance of the bride, is not taken *by her father in law*; nor property given at the bridal proceſſion. Wealth alſo, received on a ſecond marriage, is not taken by the bridegroom's father, for a ſecond marriage is contracted for the purpoſe of obtaining that wealth. Nor *is* property, which is received after marriage from the wife's parents *and kindred, taken by the huſband's father*: ſuch is the eſtabliſhed uſage.

BE it as it may be, according to CHANDE'SWARA's opinion; but on the

* The ſeminaries of priests, ſeated on the weſtern bank of the *Bhágirat'hí* river, are called, from the name of the country, *Rá'dhíya*, (proceeded *Rádha*).

other

other opinion, how are gifts to near neighbours, revenue paid to the king, and a preſent to a wife on the ſecond marriage of her lord, comprehended in the text? To near neighbours preſents are made from friendſhip, or as an acknowledgment to benefactors; for, in this inſtance, the return of an obligation may be ſuppoſed as a motive. Revenue is paid to the king as wages, or as the price of the produce of land, becauſe he has an intereſt in the ſoil. What is given to a wife on the ſecond marriage of her lord, appears to be given for pleaſure (Book V, v. LXXXVII); for the former wife's conſent to her huſband's eſpouſal of another affords him pleaſure. This, and other caſes may be underſtood according to circumſtances: in all inſtances, pleaſure *and gratification* may be ſuppoſed *to influence the gift*.

The mention of theſe irrevocable gifts is intended to ſhow the motive of donation. In theſe gifts it ſhould be diſtinguiſhed, whether the property might, or might not, be given away: but pleaſure, as a motive of donation, muſt be underſtood with an exception to luſt and the like. *On this* more will be ſaid, under the title of void gifts.

LI.

Dacsha:—Presents given to a mother, a father, a ſpiritual teacher, a friend, a moral man, a benefactor, an indigent or unprotected perſon, and a learned man, are productive *of benefit*.

Here it is not meant, that they are productive of moral benefit alone, but of other advantage alſo. Does not ſome benefit exiſt in every caſe; why is it ſaid, that preſents given to a mother and the reſt are productive? They are productive of the higheſt benefit. If gifts be made to a mother or a father, proſperity in this world, and increaſe of religious merit, ariſe from their ſatisfaction. By gifts to a friend, the higheſt *degree of* friendſhip is obtained. By preſents to a moral man deſerving of them, the higheſt fame *is obtained*. A preſent to dancers is attended with fame, but gains *only* a middle degree of reputation; and therefore is not mentioned in this place. A gift to a benefactor prevents *the charge of* ingratitude. Donations to the indigent and

unprotected, from tenderneſs or from regard to duty, produce religious merit. Sometimes even what is given without any conſideration of duty, on account of the reſpectable qualities of a deſerving perſon, produces religious merit.

LII.

CA'TYA'YANA:—WHAT is received for relieving a man from apprehenſion of danger, or ſaving him from actual peril, or for promoting a matter in which he was intereſted, is an acknowledgment to a benefactor.

2. WHERE a reward, offered for the recovery of property miſſing, is received for diſcovering it, the gift is conſidered as *a payment of* wages.

3. BUT if *the reward be* thus offered, "I will give all my property to him who ſaves me from this danger, to which my life is expoſed," it ſhall not be ſo *given*.

AFTER relieving any man ſinking under apprehenſions from the king or the like, what is received from him, is an acknowledgment to a benefactor. So, what is received for preſerving him from danger. A tiger lies in wait to ſeize ſome traveller, who perceives not the animal; but another man, coming from a diſtance, ſlays the tiger with a weapon, or, boldly taking this man in his arms, carries him far *from danger:* what the traveller, thus ſaved, gives to his preſerver, is given as an acknowledgment to a benefactor. So is a preſent made for accompliſhing ſome buſineſs: for inſtance, ſome perſon has in hand the marriage of his ſon, and any man, coming of his own accord, even though not induced by familiar intimacy, accompliſhes the object; what that perſon gives to him, after the attainment of his object, in conſideration of the favour received, is an acknowledgment to a benefactor: and ſo, in many other caſes.

WHEN a perſon finds not ſome chattel required for a particular purpoſe, and, greatly diſtreſſed thereat, ſays, "whoever ſhows me this chattel, I will

give

give him so much :" after a reward has been thus offered, some person coming points out the thing; is the reward, then given, an acknowledgment to a benefactor, or not? The legislator replies, it is not an acknowledgment to a benefactor, but " wages" (LII 2).

A reward, for the recovery of property missing, is there mentioned generally; *if any man* whosoever act with a view to a reward, what is given to him, is considered as his wages: but, where a man acts spontaneously, *or* from habits of intimacy, what is given to him, is an acknowledgment to a benefactor. Yet, even in the case of wages, should an excessive amount be promised by a man in extreme distress, it shall not be delivered (LII 3). Danger of life is mentioned to denote extreme distress; in fact, should a man, during a conflagration, or during the sickness of his son, or the like, promise all his wealth, or one or two *lacshas*, to the person who shall save him, that promise is not valid. But it is reasonable, that the gift should be great in proportion to the benefit conferred; if ten, fifteen, or twenty *pieces of money*, or the like, be promised, according to the circumstances of the case, the same should be paid. It must also be considered, that, the resumption of an excessive gift being shown where it has been promised but not delivered, the donor has an equal right to recover it, even though it have been actually delivered.

If an umpire determine a controversy between litigant parties according to law, and the party, who gains, or who loses, the cause, give him any gratuity, it is an acknowledgment to a benefactor: the gaining of the cause is an advantage to the one; and the solution of doubts is a benefit to other party. But if the fee have been previously promised by any person, it falls under the description of wages. Yet, if any litigant party, being distressed, should in any instance promise, or actually give, an excessive fee to an umpire, the excess, above the sixth part of the value in dispute, may be resumed; deducting a sixth part *of that value* from the amount promised *or paid*, he may recover the remainder, even through the intervention of the king. This is intimated by Jímúta váhana, in the *Dáya bhága* or *treatise on* inheritance: and Raghunandana, explaining the text of Ca'tya'yana respecting wealth acquired by science, " what has been received as a gift from a pupil, as a gratuity for the performance of a sacrifice, as a fee for answering a question in casuistry,

ceaſuiſtry, or for aſcertaining a doubtful point of law," mentions the ſixth part or the like, which is received for well aſcertaining *the point referred by* litigant parties, who apply for an explanation of the law.

If there be ſeveral arbitrators, they all receive and ſhare one ſixth part: for that muſt be intended; elſe, if there be ſix arbitrators, the whole property would be loſt *to the owner*. Since it is mentioned as received for well aſcertaining the point *of law*, it follows, that, if the arbitrator, receiving the fee, do not well aſcertain the *doutful* point, he ſhall be amerced by the king; and the fee ſhall be reſtored to the giver. Such is the reaſon of the law conformable with expreſs ordinance. But it is cuſtomary ſometimes to give a conſiderable reward to a *Bráhmana*, acting as arbitrator, and *uſually* living on alms, when he reſolves a doubt with great labour, or tranſcendent knowledge of law; or for ſhowing the legal form of penance and expiation: ſince it is ordained, in the rules of penance, that a preſent ſhall be made to a venerable perſon; and in that caſe a gift is neceſſary.

If any liberal prince or wealthy man, ſolicitous of gaining his cauſe in a matter of ſmall value, voluntarily give a great fee; the king, informed of the circumſtances, ſhould not fine the arbitrator. It is wealth acquired by ſcience, and is given for pleaſure; and it may be ſaid to have been propounded by Dacsha, "to an indigent or unprotected perſon, or to a learned man" (LI).

The gift of a milch cow and a bull by a perſon applying for inſtructions on the forms of penance, is declared neceſſary by the text; "let the ſinner proclaim his ſin, giving a milch cow and alſo a bull:" that *gift* is conſidered as wages. A gratuity, which is paid to a prieſt officiating at a ſacrifice, or to a ſpiritual preceptor, is alſo conſidered as a recompenſe; and whatever is given to any *Bráhmana*, for the completion of a man's own buſineſs, is granted for religious purpoſes. But in regard to holy property, as the giver's right is deveſted after conſecration, it muſt then be merely delivered to prieſts. This and other rules may be eſtabliſhed from a man's own judgment.

ARTICLE

ARTICLE III.

ON VOID GIFTS.

LIII.

NA'REDA :—WHAT has been given by men agitated with fear, anger, luſt, grief, or *the pain of* an incurable diſeaſe; or as a bribe, or in jeſt, or by miſtake, or through any fraudulent practice, muſt be conſidered as ungiven;

2. So muſt any thing given by a minor, an idiot, a *ſlave or other* perſon not his own maſter, a diſeaſed man, one inſane or intoxicated, or in conſideration of work unperformed.

"FEAR" of him, to whom it is given.

The *Retnácara.*

"A BRIBE" *(utcócha)* ſhall be ſubſequently explained.* "In jeſt;" by words expreſſing donation, but without the intention of giving. "By miſtake;" delivering to one what was to be given to another; or delivering one thing inſtead of another which was to be given: ſo CHANDE'SWARA, VA'CHESPATI, and BHAVADE'VA.

"THROUGH any fraudulent practice;" inadvertently and the like: ſo VA'CHESPATI, BHAVADE'VA and the author of the *Pracáſa.* But CHANDE'SWARA explains it, propoſing much and giving little.

"A MINOR;" one, who, from nonage, is unable to decide what ſhould, or ſhould not, be done. "An idiot," naturally incapable of diſtinguiſhing right from wrong. So CHANDE'SWARA. "Minor" is explained by BHAVADE'VA and VA'CHESPATI, one, who diſcriminates not what is, or is not, done. Fool they explain "idiot."

* LIX.

" A PERSON not his own master;" a son, slave, or the like. " Intoxicated;" drunk with wine or the like. " Outcast;" banished.*

CHANDE'SWARA, VA'CHESPATI, and BHAVADE'VA.

" IN consideration of work unperformed;" deluded by the false promises of the receiver: so CHANDE'SWARA. But BHAVADE'VA and VA'CHESPATI explain it, a gift for a consideration, which is null.

" A DISEASED man;" afflicted with any malady. " Agitated by pain," afflicted with an incurable distemper. The *Mitácshará*.

THE author of the *Mitácshara* and others do not approve the reading, which omits " a diseased man." †The text is cited, with the other reading, in the *Cámadhénu*, *Mitácsharà*, *Vivàda-Chintámeni*, *Dwaita-nirnaya*, and other works.

IN the *Cámadhénu* and the rest, the reading is *apavarjitam*, given (instead of *apavarjitaih*, by outcasts from their tribe); explained by HELA'YUDHA and the author of the *Mitácsharà*, " what is given by a minor and the rest, must be considered as ungiven." They suppose the validity of a gift made by an outcast; yet both opinions may be held to coincide: thus, according to HELA'YUDHA and others, it should be said, that a man banished from the family, for the murder of the king, or other heinous crime perpetrated by him, has no right to give away property belonging to that family, because he is not his own master. The reading, quoted by CHANDE'SWARA, is *apavarjitaih*, or by *outcasts*, which he explains, banished *from their tribe:* but CHANDE'SWARA and the rest do not controvert the validity of a gift, when a banished man gives what he himself has acquired *after his expulsion*.

MEN agitated with fear, anger, lust, grief, or pain, are five, *whose minds are* disturbed from their natural state; as is remarked by VA'CHESPATI-MISRA, CHANDE'SWARA, VA'CHESPATI BHATTA'CHA'RYA and BHAVADE'VA

* [illegible] reads *ni*, another reading is followed in the translation.
† It is read [illegible] instead of *Bala mad'hyasa'dhita*.

THIS

THIS is declared by the ſame legiſlator, who thus deſcribes a perſon not his own maſter.

LIV.

NA'REDA.—THOUGH *generally* his own maſter, what a man does, while diſturbed from his natural ſtate *of mind*, the wiſe have declared not done, becauſe he is not *then* his own maſter.

SOME infer this meaning " where the volition of an owner, diſcriminating what may, and may not, be done, and guided ſolely by his own will, declares, as is actually intended by him, his own property deveſted, and dominion veſted in a perſon capable of receiving, and actually intended by the donor, over the thing really intended to be given, that volition veſts property in the donee ' In caſes of fear and compulſion, the man is not guided ſolely by his own will, but ſolely by the will of another In the caſe of a man agitated by anger or the like, he is not a perſon who diſcriminates what may, and may not, be done If, terrified by another, he give his whole eſtate to any perſon for relieving him from apprehenſions, his mind is not in its natural ſtate. but, after recovering tranquillity, if he give any thing in the form of a recompenſe, the donation is valid. What is given as a bribe, or in jeſt, is a mere delivery, or a gift in words only there is no volition veſting property in another As for what is given by miſtake, as gold inſtead of ſilver which ſhould have been given, or any thing delivered to a *Sudra* inſtead of a *Brahmana* to whom it ſhould have been given, the gold and the *Sudra* are not the *thing and the perſon* really intended, namely ſilver and a *Brahmana* Though it be aſcertained, that ten *ſuvernas* ſhould be paid, if any how, through inattention or the like, fifteen *ſuvernas* be delivered, the *gift is* not valid, for they are not what was really intended to be given or the donation is in this caſe void, becauſe the giver did not diſcriminate what ſhould, or ſhould not, be done Where much is propoſed and little given, (as where a man propoſes to give much for what may be effected at little coſt, and after the work is accompliſhed, pays the ſimple due,) there, ſince the exceſs was only promiſed, or delivered, for the purpoſe of deluding, the will to veſt property *in another* is wanting, and

and the gift is therefore void, as in the cafe of a bribe: but with this diſtinction, that in the caſe of a bribe the whole gift is utterly null, and here it is void in part.

THIS will be *beſt* underſtood after an explanation *of bribe*. According to the opinion of MISRA ſuch a fraudulent practice is comprehended in *this* deſcription, for *ch'hala* or fraud is ſynonymous with *upadhi*, ſince what is denoted by *the word* "*ch'hala*" or deceit as employed by MENU, VRĬHASPATI expreſſes by the word "*upadhi*" (BookI, v. CCXXXVIII); and CHANDE'SWARA quotes that and ſubſeqent texts, premiſing theſe words, "VRĬHASPATI on the ſubject of *legal* deceit (*ch'hala*), lawful confinement, and violent compulſion." *Upadhi* in general is any improper act. Conſequently in every caſe of improper gift, where a donation is falſely promiſed, there is fraudulent practice. CHANDE'SWARA ſubjoins "and the like:" where a man intruſts his own property to another for the purpoſe of deceiving his creditor or the like, ſaying "it is given to him," the gift is void: and this ſhould be included under the term, "and the like." Other caſes may be determined, in this manner, by intelligent conſideration.

HERE the gift is void, becauſe the will of veſting property is wanting: and the want of ſuch will is inferred from the improbability of ſuch a gift being intended, from *the character of* the perſon, or from the neceſſity which then exiſted of deceiving him, or from the intention of the parties; this and other points ſhould be determined by the wiſe. It muſt however be noticed, that, if a man engage a *Bráhmana* in mechanical arts or the like by propoſing great wages, it is fit he ſhould receive a large recompenſe; becauſe he is induced by the deſire of wealth to deviate from his regular duty: but he ſhould not receive exceſſive wages. Other caſes ſhould be determined in the ſame mode.

THE text of CA'TYA'YANA (LII 3) muſt be brought under *this* head according to the opinion of CHANDE'SWARA: *but*, MISRA and others explaining "through any fraudulent practice," inadvertently, it may be brought under the head of miſtake; for there exiſts a miſtake of what ſhould not, for what ſhould, be given.

It

If the monthly wages of a hired ſervant be one *mudrà* or coin; and he has performed work, at one period, for ten months, at another for one month, at another again for eleven months; and afterwards, when it is propoſed to pay the whole wages, ſome perſon, ſkilled in accounts, has noted the ciphers on the ground in a vertical line for the purpoſe of computing the ſum; but, through ſome errour in notation, miſtaking the cipher of one for ten, computes accordingly; and thinking that thirty one *mudrás* are payable, ſays ſo to the ſervant's maſter; and the maſter pays that ſum to the ſervant: afterwards ſome other perſon, ſkilled *in accounts*, detects the errour: *is* not the gift *or payment* invalid? For it is given through deceit according to the opinion of Misra: deceit ſignifies miſleading; and here he is actually miſled by the words of another. But according to Chandéswara it muſt be *conſidered as given* through a miſtake reſpecting what ſhould be given. How then can the opinion ſtated apply in this inſtance; for the thing and the perſon were really intended; the owner was able to diſcriminate what ſhould, or ſhould not, be done; he was governed by his own will; and he willed to transfer the property in thoſe thirty one *mudrás?* The anſwer is, although the perſon were really intended, the giver was not aware that he was a proper donee as far as twenty one or twenty two *mudrás only*, and that thirty one *mudrás* ſhould not have been given.

In a ſimilar caſe, if the hired ſervant reſide at a diſtance, and the maſter die after ſending thirty one *mudrás* by a meſſenger; when the exceſs of nine *mudrás* above his due becomes known, if the meſſenger and ſervant *both* wiſh to take it, and the king neglect *to claim* the money; who ſhall obtain it? [6] It ſhould not be argued that, becauſe the whole money is delivered to the ſervant, he is entitled to take it; but the meſſenger can have no pretenſions to it. The ſervant, having no acknowledged property in the ſurplus, cannot take it, ſince it is a depoſit for delivery in the hands of an intermediate perſon; and, if the meſſenger, computing the ſum, by miſtake cauſed the *exceſs* to be paid, then *it* is gained by his act. *Theſe lawyers* anſwer, it *may be ſo.*

But others hold, that the act, reſpecting the nine *mudrás* which [illegible] his due, partakes not of the nature of theft; becauſe, the [illegible] at the time of the receipt, they are not ſtrange property.

ment of *wages or* hire, for it was not regular to give so much. Therefore this is a semblance of gift: and whomsoever that intends, in him it vests *seeming* property. Afterwards, when it is proved by a plaintiff to be only the semblance of a gift, that title is devested, like the property in stolen goods. This should be established as shown by the practice of the best men. It is not seen among good customs, that the king, on failure of heirs, should, after the death of the giver, take property given to an improper person: or that any person whosoever may take it, if it be neglected by the king. Seizing it forcibly, he does not obtain what is thus acquired by robbery. To this opinion the best authors assent; and their assent is consistent with common sense. If it be asked, what proof is there of relative property? The answer is, that right is vested by *inconsiderate volition*.

But that is barred by the ordinance, "what has been given by mistake, "or through any fraudulent practice, must be considered as ungiven" (LIII 1). It should not be argued, that the ordinance only shows the *subsequent revival of the donor's title: for it is difficult* to establish the suppression of relative property intermediately vested. This is denied; for it is, on the other hand, difficult to annex absence of mistake, or the like, as a requisite condition of vesting property by the will of the donor.

If the difficulty of proving the revival of the donor's title, and the suppression of relative property, be retorted; the answer is, in a case where it is doubted whether there be, or be not, difficulties arising from very minute and logical distinctions, (as in the case of semblance of property,) the suppression and revival of the donor's title should be admitted in conformity with reason. In the case of robbery, this difficulty is raised by the sages themselves: but if the law, as propounded by them, must in that case prevail, even then, since civil ordinances are grounded on reasoning, such a construction should in this case be set forth: and it is indeed proper; for a rule expresses, that, "a principle of law, established in one instance, should be extended to other *similar* cases, provided there be no impediment." The suppression of a property intermediately vested may be established in this instance; for it would be contrary to reason, that a robber should have property in what he has seized against the will of another, and that *a donee should have* none in what

has

has been given by the owner If the messenger knowingly deceive *the principal* for the purpose of acquiring the property himself, it is a theft on his part to affirm, that the thing becomes his, would be improper, for, if any criminal, liable to be punished by the king, apply to a principal officer of the realm to save him from that punishment, and be told, "I will save thee by giving a hundred *rudras* to the king's minister, and that officer, taking the money, save the criminal, influencing the king's minister by verbal persuasion when the circumstance becomes known, the criminal, from his want of power, cannot cover the money, but the king's minister, (alleging, "this was given for me, why do you take it?) may reasonably exact it from that officer Here the reason of the law, as abovementioned, is pertinent

"MINOR (LIII 2) is *a term* employed indefinitely, and comprehends a decrepit old man This CHANDESWARA, MISRA, and others expressly declare. "Idiot' is explained by CHANDESWARA, naturally destitute of power to discriminate what may, and may not, be done *By inserting* "naturally the word minor would not by any means be rendered unmeaning Of what use is that insertion *in explaining idiot?* "Minor' should not therefore be limited to age, and "idiot" should be otherwise explained According to its etymology from the verb *sub*, be stupid or want sense, *mud'ha* signifies stupid or foolish, and thence may signify unknowing consequently, where a man gives any thing ignorantly, the gift is void For instance, a *Brahmana*, supposing that kine may not be attended by a man of the sacerdotal class because it is the duty of a *Vaisya*, has given away his cow to some person, afterwards, discovering that a *Brahmana* may attend kine, (for no law forbids it,) the donor says, "I gave you the cow through ignorance, therefore restore her," in that case the gift is void, and *the cow* must be restored

IF it be said, the gift is not void, then the person, who retains all that is *given* by mistake, would be innocent, for there is a contract of donation what difference is there between a thing given through mistake respecting himself, and through mistake respecting the gift? As a payment of fifteen *suverras*, where ten *suvernas* should be paid, is void, so the gift is utterly null, where the whole ought not to have been given Thus some expound the law But

that

that is wrong; for it would fall under the deſcription of things given inadvertently or by miſtake. In fact it is not expreſsly ſaid by any author, that, in ſuch a caſe, the gift is void: and we do not admit *the inference*; for it is irregular to aſſert, in a doubtful caſe, that the act done is null.

In the caſe of an erroneous payment of wages, *the exceſs* muſt neceſſarily be refumable; for, in the payment of wages, abſolute gift is not contemplated. It ſhould not be objected, that, in the caſe *ſtated*, the donation is void, becauſe there is no ſuch duty, as is the declared motive of relinquiſhment; namely, not to attend kine. Without intending *ſuch* derelict̃ion, the gift may be valid, becauſe there is the intention of making a gift transferring property to another, and a benefit to him is deſigned: conſequently, where a thing is relinquiſhed on a miſtaken motive for derelict̃ion it may be reſumed; where it is given on a miſtaken motive for relinquiſhment, it cannot be withdrawn; but where it is given on a miſtaken motive for donation, it may be retracted. This rule coincides with our opinion.

Where a king, from the miſtaken ſuppoſition that the partition of a kingdom is forbidden, gives his dominions to one ſon, it is not fit that the gift be reſumed on proof brought by the other ſons, from law or cuſtom, that partition of kingdoms is not forbidden; for his motives in making the donation are to confirm the kingdom to his ſon, and avoid partition; and his motive for avoiding that is the ſuppoſition, that a kingdom is indiviſible: though he do miſtake, *it does* not *follow that* partition may not be omitted; for the *kingdom* is *thereby* perpetuated: to ſet aſide a gift already made, it muſt be proved that all had ownerſhip *but in this caſe* the reſt had no prior title to *claim* partition; *the poſſeſſor* himſelf may legally omit it; and the avoiding of it, which is the motive of the gift, preſerves the kingdom to the ſon: and the donation is not void, where the motive is *founded in* fact. It ſhould not be objected, that by removing the grounds for avoiding partition, and by thus ſhowing its legality, the motive of the gift, *which was made* to avoid it, is rendered null, and the donation is *therefore* void. Although the thought, that partition has been forbidden, which is the motive for avoiding it, be erroneous, ſtill the diviſion of certain property dependent on another perſon is not legal without the will to divide it and the act of making a diſtribution;

bution; and the motive of the gift *made to* avoid partition cannot be evaded. But in the case of the semblance of gift, since the act originates in errour, that act of volition is unheeded: the property of the donee is devested without consideration of persons. After much discussion, the question may be determined by the wise.

Others interpret "idiot," one whose mind is alienated through the influence of witches or the like, or who is deprived of sense through the influence of a particular act *(namely sorcery)*.

"A person not his own master," a son, slave, or the like: so Va'chespati-Misra, Chande'swara, Bhavade'va and Vachespati-bhatta'cha'rya.

Here some remark, that Misra and the rest have not explained the term as denoting one who is not owner, but have explained it "son, slave, or the like," by which it is denoted, that their meaning is this a gift, made by a person technically denominated not his own master, is void Persons so denominated, are described by Na'reda, as cited by Va'chespati bhatta'cha'rya (XV). If there be an unseparated brother, senior by age and virtue, and occupied in maintaining the whole family, a younger brother has no power to give or sell either share of the whole joint-estate, therefore the gift or sale is void: but a contract, made by such an elder brother, is valid for both shares.

LV.

Vya'sa: — But, at a time of distress, for the support of his household, and particularly for the performance of religious duties, even a single coparcener may give, mortgage, or sell the immoveable estate.

However, the younger brother has power over his own acquired property; his want of power will *hereafter* be limited to particular sorts of property. and here it must be so established from the reason of the law. But, if the brother be senior by age alone, his gift of the joint-estate is good for his own share only.

"ALL subjects are dependent" (XV 2): land or the like, given by subjects with the king's consent, is a valid gift; so, if a corrody be granted by a wealthy man, the gift of it, with his assent, is *valid*.

"A PUPIL is declared dependent" (XV 2): the pupil is subject to contract because the teacher shares the fruit *of* his *actions* (Book III, ChapterI, v. XIII and XVII), and what a pupil, who is maintained by his teacher, gives to another without the assent of his instructor is not legal; for he is dependent in regard to all acts generally. It is meant, that even a trifling gift is void.

WOMEN and the rest being dependent in all actions generally, even the gift of female property and the like, without the assent of the husband or master, is not valid.

LVI.

MENU: — THREE persons, a wife, a son, and a slave, are declared by law to have *in general* no wealth exclusively their own; the wealth, which they may earn, is *regularly* acquired for the man, to whom they belong.*

PERSONS not their own masters are sons, slaves, and the like: this supposes property belonging to the son, slave, and the rest; for the gift of that, which belongs to the father or master, is void, because it is made without ownership (Chapter II, v. XXVII).

AGAIN; by declaring the dominion of women over female property it is shown that the gift, *made by the husband*, is void; and the alienation *of other property* is void because the wife has a title to the husband's estate (Book V, v. CCCCXV); and the son has ownership in the paternal estate during the life of the father (XXXI); but this (LVI) must be understood of property acquired by the wife, son, or slave. "A householder is not independent &c." (XV 3); the father has not power to give or aliene, for civil purposes, gems, pearls, land or the like, which have descended from ancestors, nor immoveable property, even though acquired by himself (XIV).

* See Book III, Chapter I, v. LII.

THUS

THUS they interpret the law: but that is not satisfactory, for it has been already answered. The gift even of the immoveable patrimony, for religious purposes, is valid without the assent of sons and the rest, for excellent usage has legalized *such donations*, and no particular ordinance is found on this point neither VIJNYANE'SWARA, nor any other author, expressly declares, that property inherited from the paternal grandfather, and given by the father without the assent of the sons, is a void gift. Thus in explaining the text, "the father and sons have equal dominion &c." (XXXI), VIJNYA'NE'SWARA says, the son may oppose a father attempting to give away property inherited from the paternal grandfather Therefore persons not their own masters, as a son, slave or the like, are mentioned, because they are nearly connected with the owner, it might *on that account* be doubted whether their gifts be valid there can be no question, whether a gift made by a stranger be good in law, therefore it has not been noticed.

"ONE insane' is not in his natural state A gift, made by an outcast, is void, because property is forfeited by degradation "In consideration of work unperformed' what a man gives, deceived by the promise of the donee, "I will execute this business for thee, give me a reward," is not a valid gift, if the work be unperformed and this relates to the payment of wages. So, in regard to a gift in expectation of a grateful return.

IF some person, having no issue, tell any man related, or not related, to him, "I give thee all my property, and thou shalt perform the last duties "for me,' but the land or the like be afterwards occupied by the donor, what is the rule in regard to the validity of the gift Without occupancy the donation cannot be valid but if the donee reply, "I give this to preserve "the aged giver from poverty," not, "I relinquish this," then the gift is valid on proof of occupancy The donation is null, if the consideration be void, the ground for invalidating the gift is the failure of *any* part of the declared purpose.

HERE an observation should be made. If it be asked, what is the rule, in the case where some considerations, such as maintenance for life, and so forth, are performed; and some considerations, such as the funeral rites, are not performed?

formed? *the answer is*, the gift is void, because the donee's agreement is broken by not performing the whole contract, and because there is a failure in some part of the declared purposes.

In the *Mitácharà* the distinction is declared between a diseased man and one agitated by *the pain of* a disease: "a diseased man," afflicted with any disease; "agitated by pain," afflicted with an incurable disease. If it be leprosy or the like, the man afflicted with that distemper has not ownership in the estate; but, if the giver have ownership, it is not consistent with reason, that the payment of wages or the like should be void. Nor is it proper to say, that this prohibition regards only what is given from friendship; for there is no such limitation of the law. This and other points should be considered.

But others explain "agitated by pain," afflicted with a distemper, which destroys sense, as a complicated marasmus, or the like; and "a diseased man," one whose sense has been destroyed, without such a distemper, and without intoxication, but by swallowing pernicious drugs or the like.

Bhavade'va, Chande'swara, and Va'chespati, remark, that a gift, made for religous purposes even by a diseased man, is valid (III). This should be admitted, and is meant by Ji'mu'ta va'hana, Raghunandana, and others: but there is no question on the validity of gifts for religious purposes, since Na'reda limits the rules to civil donation (II 2); and this text (III) is quoted by Misra under the title of loans and payment, and is explained by us in the first book, as applicable to the subject of the payment of debts.

In fact, as rich and easy signifies possessing wealth and tranquillity, so the text must be acknowledged to signify, that gifts, made by persons in the circumstances described, (agitated by fear &c.) are void. A gift, made by one influenced by avarice, is valid, if the profit be obtained; else, it is void. But a donation, made without ownership, is always null. Gift *or delivery of things* as wages, for pleasure, for purchase, as a nuptial fee, as a grateful return, as a present to a worthy man, from natural affection, or from friendship, are valid *and irrevocable*. Hence, what is given for a declared

declared religious purpoſe, even in ſickneſs, is not invalid; for CHANDE'SWARA holds, that a preſent to a worthy man is a gift for a religious purpoſe; and it is excluded from void donations. Even a minor makes preſents on the eleventh day after his father's death; though given by a minor, they are *legal* gifts: his ſenſe being unripe, the donation may be made by inſtructions from others, as he is taught to play at ball or the like. A gift may be made even by a perſon who is not his own maſter; thus any man, having authority over him, may cauſe him to give the thing, for a neceſſary purpoſe. So, in other caſes: but a payment of wages or the like, by a man agitated by anger or the like, is valid, provided his mind be tranquil during that act and at that time: otherwiſe it is not; for contracts are univerſally forbidden during a ſtate of inſanity or the like (LIV).

LVII.

MENU:—A CONTRACT made by a perſon intoxicated or inſane, or grievouſly diſordered, or wholly dependent, by an infant or a decrepit old man, or *in the name of another* by a perſon without authority, is utterly null.

LVIII.

YA'JNYAWALCYA:—A CONTRACT made by a perſon intoxicated or inſane, or grievouſly diſordered, or diſabled, by an infant or a man agitated by fear or the like, or *in the name of another* by a perſon without authority, is utterly null.

SINCE there are no other texts of MENU and YA'JNYAWALCYA, explaining illegal donation, the enumeration of void gifts muſt be taken from theſe. Singly, the gift of wages by a man poſſeſſing his ſenſes is valid; joined with madneſs or the like, the intentional payment of wages during a lucid interval *may alſo be valid*; but ſingly, a gift by a man affected by inſanity or the like is void. Such is the meaning.

IF the validity of gifts made in conſideration of duty, notwithſtanding ſickneſs, be intended by authors; then a ſimilar donation, by an inſane perſon,

formed? *the answer is*, the gift is void, because the donee's agreement is broken by not performing the whole contract, and because there is a failure in some part of the declared purposes.

In the *Mitácshara* the distinction is declared between a diseased man and one agitated by *the pain of* a disease "a diseased man," afflicted with any disease, "agitated by pain," afflicted with an incurable disease If it be leprosy or the like, the man afflicted with that distemper has not ownership in the estate, but, if the giver have ownership, it is not consistent with reason, that the payment of wages or the like should be void Nor is it proper to say, that this prohibition regards only what is given from friendship, for there is no such limitation of the law. This and other points should be considered

But others explain "agitated by pain," afflicted with a distemper, which destroys sense, as a complicated marasmus, or the like, and "a diseased man," one whose sense has been destroyed, without such a distemper, and without intoxication, but by swallowing pernicious drugs or the like.

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In fact, as rich and easy signifies possessing wealth and tranquillity, so the text must be acknowledged to signify, that gifts, made by persons in the circumstances described, (agitated by fear &c) are void. A gift, made by one influenced by avarice, is valid, if the profit be obtained, else, it is void. But a donation, made without ownership, is always null. Gift *or delivery of things* as wages, for pleasure, for purchase, as a nuptial fee, as a *grateful return*, as a *present to a worthy man*, from *natural affection*, or from friendship, are valid *and irrevocable* Hence, what is given for a declared

declared religious purpose, even in sickness, is not invalid; for CHANDE'SWARA holds, that a present to a worthy man is a gift for a religious purpose; and it is excluded from void donations. Even a minor makes presents on the eleventh day after his father's death; though given by a minor, they are *legal* gifts: his sense being unripe, the donation may be made by instructions from others, as he is taught to play at ball or the like. A gift may be made even by a person who is not his own master; thus any man, having authority over him, may cause him to give the thing, for a necessary purpose. So, in other cases: but a payment of wages or the like, by a man agitated by anger or the like, is valid, provided his mind be tranquil during that act and at that time: otherwise it is not; for contracts are universally forbidden during a state of insanity or the like (LIV).

LVII.

MENU:—A CONTRACT made by a person intoxicated or insane, or grievously disordered, or wholly dependent, by an infant or a decrepit old man, or *in the name of another* by a person without authority, is utterly null.

LVIII.

YA'JNYAWALCYA:—A CONTRACT made by a person intoxicated or insane, or grievously disordered, or disabled, by an infant or a man agitated by fear or the like, or *in the name of another* by a person without authority, is utterly null.

SINCE there are no other texts of MENU and YA'JNYAWALCYA, explaining illegal donation, the enumeration of void gifts must be taken from these. Singly, the gift of wages by a man possessing his senses is valid; joined with madness or the like, the intentional payment of wages during a lucid interval *may also be valid*; but singly, a gift by a man affected by insanity or the like is void. Such is the meaning.

IF the validity of gifts made in consideration of duty, notwithstanding sickness, be intended by authors; then a similar donation, by an insane person,

ſon, may be valid, from parity of reaſoning in the want of poſitive texts This and other points ſhould be determined

MISRA obſerves, that gifts from an impulſe of luſt or anger have been explained in the caſe of loan and payment, and after premiſing the words 'in fact,' he inſerts the text of CA'TYA'YANA (Book I, v CCIV).

WHAT is the rule in regard to things given by an indolent man or the like, or by a weak man and ſo forth, for both are omitted? If extorted by fear or the like, the gift is void, if that do not attend the donation, it is valid In fact a gift, attended with any defect, is void but a donation, ſpringing from a *ſufficient* motive, is valid.

AN obſervation ſhould be here made. If it be aſked whether a commodity ſold, and a loan advanced, be ſtated in the number of irrevocable gifts, or in the number of void donations, and what is the rule reſpecting them, *the anſwer is*, the one might be comprehended under the term *which has been explained* the price of a commodity ſold, *for it may mean* a commodity receivable for a price, and the intereſt of a loan may be *deemed* a preſent given as an acknowledgment to a benefactor, but regulated by the law. Or what is declared by ordinances concerning loan and payment, may be added to the number of irrevocable gifts, under the remark of CHANDESWARA "it is not implied that one *text* curtails another

CA'TYA'YANA explains *utcocha* or bribe.

LIX

CA'TYAYANA:—WHATEVER is received for giving information of a thief or a robber, of a man violating the rules of his claſs, or of an adulterer, for producing a man of depraved manners *ready to commit theſts or other crimes*, or for procuring a man to give falſe teſtimony,

2. That is all denominated *utcócha* or *given on an illegal conſideration*: the giver ſhall not be fined, but an arbitra-

tor

tor or intermediate perſon, *receiving a bribe,* ſhall be held guilty.

When theft and violence are both committed, the offender is "a thief and robber." "A man violating the rules of his claſs;" an outcaſt: Chandéswara explains the terms ſimilarly. What is promiſed to the perſon who produces a thief, a robber, an outcaſt, an adulterer, or a man of depraved manners, or to a perſon who ſuborns falſe teſtimony, is called *utcócha;* the ſame *authority* expreſsly declares, that, if promiſed, it ſhall not be delivered; if given, it ſhall be reſumed.

LX.

Cátyáyana:—If a bribe be promiſed for any purpoſe, it ſhall by no means be given, although the conſideration be performed;

2. But if it had at firſt been actually given, it ſhall be reſtored by forcible means; and a fine of eleven times as much is ordained by the ſon of Gárga and by the ſon of Menu.*

A bribe promiſed, as the recompenſe of an evil act, ſhall not be given, though the conſideration be performed.

Utcócha, or *utcóchà,* is of both genders, *(maſculine and feminine,)* as ſhown in two different texts.

If it had been firſt received, and the information afterwards given, it muſt be reſtored. In this explanation, Misra, Chandéswara, and the reſt, concur. If he refuſe to reſtore it, he ſhall be compelled by forcible means; and a fine ſhall in this caſe be impoſed: and that penalty is fixed at eleven times as much as was promiſed. So Chandéswara.

Whom does the fine concern? The receiver of the bribe. That the giv-

* Another reading gives the name of Gálava

er

er (the person who obtains secret information by the disbursement of money) should be fined, he denies in the former text, "the giver shall not be fined." But if an arbitrator *or intermediate person (for the word has both senses)* receive a bribe, he shall be punished. Herein the *Vivâda Chintâmeni* concurs. In fact, if one be concealed, and another search for him, the intermediate person, deluded by a bribe and producing him, shall be held guilty. CHANDE'SWARA explains it, "the intermediate person, and he, who causes the "bribe to be given, shall not be punished; but the receiver shall be fined "eleven times as much." His meaning is, that the giver, or person who causes the bribe to be given, and the intermediate person employed, shall not be fined.

ACCORDING to the *Vivâda Chintâmeni*, the *privative* A is inserted; *asatya*, false *testimony*. But some read *satya*, or true *testimony*. Truth must necessarily be spoken even without wages: but if a man, receiving hire, or the promise of it, give true testimony, it is proper he should restore the money, because it has been received for a business, in which wages are improper. But he, who from avarice consents to act dishonestly in giving false testimony, should not be compelled to restore what he receives, because it is the price for which he sells his honesty. Thus they interpret the text. But the reading of the *Vivâda Chintâmeni* tends to maintain honesty: thus, if the practice suggested by such an ordinance be duly enforced, none would receive a bribe to procure false testimony; provided the promoter of a false suit conceal it not.

OTHERS say, what is given for a false accusation of theft, or for the discovery of depraved manners, or to procure false testimony, may be *resumed*; and if promised, it should not be delivered. On the question whether the giver shall, or shall not, be fined, (for he might be amerced, since he commits an offence,) the text declares, "he shall not be fined." Since a false accusation is infamous, there might be some amercement imposed on the suborner as guilty of an offence; but the law has excused the fine. The intermediate person, between the accused and the suborner, preferring the accusation from a motive of avarice, shall be fined: or *according to another construction*, he shall not be amerced; that is, he shall not be fined in an equal amercement; *but* he shall

pay

pay a quarter leſs *than the amercement mentioned in another place;* for he is guilty of an offence. The grounds, on which the bribe is reſtored, are, that the gift is made for the purpoſe of deluding: what is the rule, if it be given in earneſt? It ſhall not be reſtored, for it is given by an owner, who is his own maſter. But what is given or promiſed for the purpoſe of deluding, is not good in law. "If a bribe be promiſed for any purpoſe &c." (LX); this means what any perſon, ſolely conſidering the accompliſhment of his purpoſe, promiſes for the ſake of deluſion: and this ſhould be underſtood of buſineſs, for which wages are not proper.

LXI.

CA'TYA'YANA:—WHAT has been given by men under the impulſe of luſt, or anger, or by ſuch as are not their own maſters, or by one diſeaſed, or deprived of virility, or inebriated, or of unſound mind, or through miſtake, or in jeſt, may be taken back.

"ONE diſeaſed;" affected with diſeaſe and the like, or impelled by hunger and ſo forth. A gift made by one deprived of virility is void, for he has not power over the family-eſtate: but, if he give away what he himſelf acquired, the gift is valid. It is not *directed*, that one deprived of virility, buying a commodity, ſhould not pay the price; *but, in regard to* what is given through friendſhip, *it* is conſiſtent with reaſon.

"OF unſound mind;" naturally incapable of diſtinguiſhing right from wrong; or whoſe mind is alienated in conſequence of diſeaſe, or of *magical* arts; or who is deluded by a promiſe in this form "I will perform this work for thee."

BY ſaying, "it may be taken back," the gift is declared void. Donations made under the influence of grief or the like, or by a minor, muſt be underſtood from the concurrent import of this text with that of NA'REDA (LIII).

LXII.

VRIHASPATI:—WHAT is given by a perſon in wrath or *exceſſive*

ceſſive joy, or through inadvertence, or during diſeaſe, minority or madneſs, or under the impulſe of terrour, or by one intoxicated or extremely old, or by an outcaſt or an idiot, or by a man afflicted with grief or with pain,

2. Or what is given in ſport; all this is declared ungiven, or void.

3. If any thing be given for a conſideration unperformed, or to a bad man miſtaken for a good one, or for any illegal act, the owner may take it back.

A GIFT made through inadvertency cauſed by joy is not void; but what is given without diſcrimination, the mind being diſturbed by exceſſive joy, *is invalid:* or it may be underſtood of what is given through joy originating in luſt. Inadvertency or miſtake have been already explained. "Extremely old;" one whoſe organs of ſenſe are impaired: ſo MISRA. "Outcaſt;" baniſhed for his crimes: the term is ſo explained in the *Retnácara*. "An idiot;" the term is interchangeable with *múd'ha* already explained. "Given in ſport" or in play: ſo the *Retnácara*. The word is ſynonymous with that, which has been already explained "given in jeſt."

"GIVEN for a conſideration;" in expectation that the donee will perform ſome work: if the conſideration be not performed, the gift is void. "To a bad man" (or to any unworthy man); as the gift of gold to a man of the ſervile claſs; or a preſent to a vicious prieſt, where the declared intention was to give it to a virtuous prieſt: for the text expreſſes, "miſtaken for a good one." However, what is given to an unworthy man, but without diſtinguiſhing whether it be intended for a worthy perſon or not, is valid; for it is declared that every donation produces fruit; and none is declared univerſally unworthy of gifts.

LXIII.

MENU: — A GIFT to one not a *Bráhmana* produces fruit of a middle ſtandard; to one, who calls himſelf a *Bráhmana*, double;

double; to a well-read *Bráhmana*, a hundred thousand fold; to one, who has read all the *Védas*, infinite.

LXIV.

Uncertain: — GIFTS are ever deemed virtuous, even though presented to a *Swapáca* or the like; but especially, if given at a proper time and place, in proper form, and to a worthy man.

THESE texts cannot be said to relate to the gift of food; for there is no such limitation. The expression, "stone transports not stone over the deep," is intended as praise of men who deserve gifts.

"To a person who calls himself a *Bráhmana*;" who says, "I am a *Bráhmana*," but *in fact* belongs not to the sacerdotal class: and he must neither be vicious, nor degraded. "Ever," at all times and in all countries, "gifts are virtuous," or productive, even though, presented to a *Swapáca*, (a mixed class equal in degree to the *Cháńdála*,) that is, presented to any person: but especially, if given "at a proper place," in a country frequented by the black antelope, or on the banks of the Ganges or the like; "at a proper time," during an eclipse of the sun or moon; "in proper form," looking towards the east, delivering *cusa*, *tila*, and water, and so forth; "to a worthy man," to one who has read all the *Védas*; such gifts "especially" produce fruit; they produce the greatest reward.

"FOR any illegal act;" from this exposition of CHANDE'SWARA compared with the gloss of CULLU'CABHATTA on the text of MENU (XLVIII), "if the man, asking a gift for some religious act, do not perform it, the owner may resume a gift thus applied to a purpose different from a religious one," his *meaning* may be thus stated, "for an act not religious:" for he admits such an explanation of the text formerly quoted from GO'TAMA. Consequently, if a man ask and receive a gift for a religious act, or for consumption, and give it to a harlot, the donation is void.

WHAT is given for a false accusation of adultery, is a void gift: what

NA'REDA

NA'REDA and CA'TYA'YANA call a bribe or *utcócha*, is explained, according to the texts of other *sages*, given for an illegal act But this appears wrong, for that cannot be eſtabliſhed in a text of NA'REDA to the ſame purport.

LXV.

NA'REDA:—BUT what ſhall be given ignorantly to a bad man called a good one, or for an illegal act, muſt be conſidered as ungiven.

FROM the term "ignorantly," and from the word "but, it appears, that this text does not ſet forth the invalidity of a gift delivered as a bribe for an accuſation of adultery and there is no difficulty in ſaying, that the text of VRĬHASPATI relates to the ſame *ſubject*.

IF that, for which the gift is made, be not *performed*, *the giver* may reſume it ſo the *Vivada Chintámeni* Conſequently, if a man, ſaying "I will give it to dancers," do not ſo appropriate the gift, it may be reſumed But, the matter being trifling, a generous giver will not reſume it ſuch is the cuſtom.

ALL theſe opinions ſhould be admitted but it muſt be conſidered, that, ſince the text laſt cited expreſſes "what is given to a bad man called a good one," it would be elegant in the former text to limit "miſtake" to the thing to be given, elſe there is a vain repetition.

LXVI.

GO'TAMA:—THE words of a man influenced by wrath, exceſſive joy, terrour, ſickneſs, or avarice, or of a minor, of a decrepit old man, of an idiot, or of one intoxicated or mad, are vain.

LXVII.

NA'REDA:—HE, who fooliſhly receives what is *deemed* ungiven, and he, who gives what may not be *legally* aliened, ſhould be puniſhed by a king, who knows the law,

VOID

VOID gifts of ſixteen forms, as mentioned by NA'REDA, and unalienable property, of eight ſorts, as declared by the ſame.

The *Retnacara.*

THE caſes, mentioned by other ſages, ſhould alſo be admitted and what is extorted by force is likewiſe conſidered as ungiven (Chapter II, v. X), and that is comprehended, in the text of NAREDA, under gifts through fear.

A FINE is ordained for him who gives what may not legally be alienated, not for the receiver therefore it is not inferred, that it ſhould be reſtored. It follows that a gift of what *regularly* ſhould not be alienated, is nevertheleſs valid If any one give away joint-property, another owner comes and ſays, " what power had he to give the whole? Reſtore therefore my ſhare " He cannot ſay, " reſtore the whole eſtate Such is the uſage ſeen in practice but cuſtom is derived from the ancients *who were* verſed in the law It cannot therefore be forcibly abrogated but in ſome inſtances cuſtom has been partly changed by ſelf-authorized moderns, who pretend to wiſdom and neglect the law. To reconcile it, reſpect ſhould be ſhown to the rules of juriſprudence, obſerving alſo time and place.

LXVIII.

MENU: — LET him fully conſider the nature of truth, the ſtate of the caſe, and his own perſon, and, next, the witneſſes, the place, the mode, and the time, firmly adhering to all the rules of practice.

LET the king, inſpecting judicial proceedings, detect fraud, and view the truth, let him conſider " the caſe, " or what belongs to it (for the term may be taken as a derivative bearing this ſenſe), that is, the forenſick practice reſpecting ſuch things, whether cattle, gold, or the like *let him avoid* trifling errours, leſt he be derided for his want of ſagacity, and let him conſider his own perſon, *remembering that* by juſt deciſions he will partake of celeſtial bliſs, and ſo forth let him conſider the witneſſes, *whether they* be obſervant of truth *or not* let him conſider the place and time, whether they

be ſuitable, and the form, whether the point conteſted be in its nature probable or improbable, and ſo forth.

CULLUCABHATTA

OTHERS thus explain the text, let him conſider the truth, "this man ſpeaks truth, that man ſpeaks deceitfully" let him decide the matter, detecting fraud and ſo forth The ſame is intended by CULLUCABHATTA Let him conſider the wealth *of the party*, his aſſets for *the payment of* a fine conſequently the meaning is, that an amerceme nt ſhould be impoſed according to the ability *of the offender* Let him conſider "his own perſon, let him reflect, "who am I? I, who am appointed by the ſupreme ruler to diſcriminate juſtice and injuſtice, have no other friend, neither the accuſed, nor the accuſer, *is a friend to be treated* with partiality.' This is alſo intimated by CULLUCABHATTA. *Let him conſider the witneſſes*, let him confront and examine them to aſcertain whether they ſpeak from contrivance or relate the fact. Let him decide the matter by incidentally inveſtigating the place and time, and ſo forth in what place, and in what occupation, to approach the wife of another is a high offence, let him inveſtigate all that, to impoſe the ſevereſt fine for *an offence* committed in that place and in that occupation. Again, ſince criminals, deſerving capital puniſhment, are numerous in times abounding with iniquity, the depopulation of the realm might be apprehended, in that caſe, inſtead of capital puniſhment, let him confiſcate the whole eſtate *of the offender*, command *ignominious* tonſure, and inflict other puniſhments, according to the nature of the offences, including theft Let him conſider "the form, or nature of the acts even if the act be proved to have been *done in* jeſt or the like, he muſt inſpect the judicial proceed-

END OF BOOK II.

BOOK III.

ON THE NONPERFORMANCE OF AGREEMENTS, &c.

CHAPTER I.

ON THE NONPAYMENT OF WAGES OR HIRE.

SECTION I.

ON SERVANTS AND OTHERS BOUND TO OBEDIENCE.

1.

VRĬHASPATI:—UNALIENABLE *property* and other *titles of gift* have been fully declared; the rules for ſervants are now delivered: and firſt is propounded the title of promiſed obedience;

2. Next nonpayment of *wages or* hire; and laſtly diſputes between maſter and herdſman in *their* order. This is the triple diſtinction of ſervants.

THIS topick of *perſons* promiſing obedience, and of *ſuch as are* diſobedient, is a title of law. The *Chintámeni*.

UNALIENA-

UNALIENABLE property and other *titles of gift* (what may, or may not, be given, and what is, or is not, a valid gift) have been fully declared; next in order the law reſpecting ſervants is delivered. What relates to him, who promiſes obedience but yields it not, is a title of law, as diſobedience and ſo forth: that is firſt propounded; the caſes are decided with penalties as ſpecified in their proper place. "Next, nonpayment of wages;" or withholding the hire of labour: afterwards the diſputes between maſter and herdſman are declared in order: this *diſtinction* of *dependent* bound to obedience, of *hireling* receiving wages, of ſervant (ſuch as herdſman) differently maintained, forms the triple diſtinction of ſervants. Such is the ſenſe *of the text;* conſequently, the rules reſpecting them, together with the conteſts between maſter and herdſman, form a ſingle title of law, according to VRĬHASPATI.

BUT other lawyers, finding in the *Retnácara* a different reading of the text of VRĬHASPATI, (*Aśuśrúſhábhyupétya*, inſtead of *Suśrúſhám abhyupaitya*) ſay, that the title of judicial procedure is named *Aśuśrúſhábhyupétya*, a compound in which the laſt word is the ſubject, "diſobedience of him who has promiſed *obedience;*" for it is ſimilar to the compound *Rájadanta*, king of teeth by the rule of CRAMADĬ'S'WARA'CHA'RYA; "in ſome other inſtances alſo *the ſubject is* placed laſt." NA'REDA likewiſe ſo *denominates this title of law.*

II.

NA'REDA:—WHEN a man yields not the obedience he has promiſed, it is called a breach of promiſed obedience, which is a title of law.

Literally, that man, who, promiſing obedience, yields it not, is named by the forenſick term of "not obedient as *he had* promiſed;" or his breach of duty is a title of judicial procedure, called (*Aśuśrúſhábhyupétya*) diſobedience of him who has promiſed obſervance: conſequently, the appoſition *gives this ſenſe*, "his title of law is," inſtead of "it is a title of law." They thus explain the laſt verſe (12); "the diſtinct rules reſpecting ſervants, (under the heads of breach of promiſed obedience, nonpayment of wages

wages or hire, and disputes between master and herdsman,) form the triple distinction of laws respecting servants and wages."

THE title of law respecting him, who, promising obedience (or compliance with commands), afterwards yields it not, is called (*abhyupétyáśuśrúshá*) promise and disobedience. The *Mitácsharà*.

IN fact, the words do not form a compound: consequently the sense of VRĬHASPATI's text is, "the promise and disobedience are first propounded, and thereon rests a double *subject of* contest." He mentions it, "wages &c.:" nonpayment of wages, and disputes between master and servant, are delivered in their order: "this, which will be mentioned, is the triple distinction of servants;" namely labourer, slave, and herdsman. The sense of NA'REDA's text is the same: neither is there any *needless* repetition; for in the first hemistich the title of law is not named. Nor is there any thing superfluous in it; for it is stated by way of example: the first hemistich describes the person implied by the name assigned in the second; and it is intended to exclude accidental disobedience. The text should be thus interpreted.

III.

NA'REDA describes servants:—PERSONS bound to obedience are in law declared by the learned to be of five kinds; four are servants or labourers, the rest, namely the slaves, are *of* fifteen *sorts*.

BUT in the *Mitácsharà* it is read; "among those, the slaves are fifteen."* The sense is, persons bound to obedience are servants of five kinds; four are labourers; the other, called slave, is of thrice five, or fifteen, *sorts*. VIJNYA'NE'SWARA, VA'CHESPATI MISRA, and others so *explain the text*.

IV.

VRĬHASPATI:—THEY are declared to be of many sorts, accord-

* *Tsshám* instead of *tsshab*

ing to class and work; and four fold for science, for human knowledge, for love, or for pay.

2. Of these again, each is distinguished according to the difference of work.

They (servants) are declared to be of many sorts. How? According to class and work; according to the distinction of tribes and of labour. He mentions the distinctions of work; "science &c." "Science;" knowledge of the *Védas* and the like. "Human knowledge;" skill in arts and the like, explained in the dictionary of Amera, arts and ordinances, *or human sciences.* "Love;" *becoming a servant* through the influence of love. "Pay," *literally* wealth; that is, money or goods. According to the distinction of labour for these causes, servants are discriminated; these four kinds are again distinguished according to the difference of work: all this will be explained.

V.

Na'reda: — A pupil, an apprentice, a hired servant, and fourthly a commissioned servant, perform work; slaves are those born *of a female slave* in the house, or the like.

"A pupil" is one who seeks *the acquisition of* science; an apprentice seeks *the acquisition of* skill in arts; a hireling and a commissioned servant both seek pay. A servant "for love" is a slave of a particular description; the other slaves are similar to servants for pay. Thus the sense is the same as in *the text of* Vrihaspati.

VI.

Na'reda: * — The wife have declared their general dependence.

Here some explain dependence, or not being their own masters, as denoting that they are incapable of acquring wealth for themselves. But others hold their

* Not named in the original, but the texts, which precede and follow this, are delivered as Na'reda's, and it seems to be implied, that this also is quoted from the same authority. T.

dependence

dependence to mean ſubjection to a maſter; conſequently the ſenſe is, they commit a ſin, and ſhall be puniſhed as is proper, if they act without, or againſt, their maſter's commands: but there is no ordinance ſhowing univerſally the property of their maſters in what is acquired by them; but where, and when, it is ſhown by the law that ſlaves or others are incapable of property; even there, and then, what they acquire, becomes the property of their maſters: and this mention of dependence is intended to determine conteſts reſpecting the independence of maſter and ſervant, or of teacher and pupil.

VII.

NA'REDA notices the diſtinction *of ſervants* by claſs: — HE is called a labourer by claſs, and has a diſtinct ſubſiſtence.

THE meaning is, whatever be the ſervant's claſs, he ſhould perform the work of it; and his ſubſiſtence *and abode* ſhould *alſo* be regulated by his claſs. For inſtance, the uſe of arms, and a habitation in the beſt place, for a *Cſhatriya*; clearing foreſts and the like, and a habitation in the worſt place, for the loweſt *Súdra*.

VIII.

VRĬHASPATI deſcribes the pupil:—THE triple ſcience is declared to be the *Rĭch*, *Yajuſh*, and *Sáma-védas*; for theſe, let him pay obedience to a ſpiritual teacher, as directed by the law.

THE *Rĭch* and other *Védas* are mentioned generally, comprehending the *At'harva-véda* and the like. "The obedience directed, or preſcribed, by the law;" conſequently, though it be not ſpecified, obedience is neceſſary; and he, who yields it not, may be reproved or chaſtiſed by the teacher; and the preceptor offends not. For the ſake of ſcience, obedience to an inſtructor muſt alſo be yielded by others than a *Bráhmana*; for they ſtudy ordinances *or human ſciences*. This muſt alſo be underſtood.

IX.

NAREDA:—UNTIL he acquire the ſcience, let the pupil diligently

ligently obey his preceptor; his conduct ſhould be the ſame towards the preceptor's wife and his ſon.

2. *Afterwards*, performing the ſtated ceremonies on his return home, and giving to his inſtructor the gratuity of a teacher, let him return to his own houſe: this conduct is preſcribed to the pupil.

By this a pupil is declared to be a ſervant.

The *Retnácara.*

Here the puniſhment of a pupil, if he do not yield obedience, is not ordained: hence, ſince it is not here directed, no amercement is *paid* to the king.

X.

Smriti:—But in caſe of ſtrife between teacher and pupil, father and ſon, huſband and wife, or maſter and ſervant, their mutual litigation is not legal.

By this, judicial procedure, *in ſuch caſes*, is not forbidden;* but Menu declares, that puniſhment may be inflicted by the teacher (XI). It appears, that, if it could not be borne, the acquiſition of ſcience would be prevented.

XI.

Menu.—A wife, a ſon, a ſervant, a pupil, and a younger whole brother, may be corrected, when they commit faults, with a rope or the ſmall ſhoot of a cane;†

2. But on the back part only of their bodies, and not on a noble part by any means.

" Performing the ſtated ceremonies on his return home" (IX); performing the *Samávarttana* ſacrifice, and giving the teacher's gratuity, for

* I ſuſpect the negative to be an error of the manuſcript. J.

† May I quote a maxim of reaſon authority, *Send, or bring an unruly pupil to his duty* ſtrike him, even with a bludgeon, *a wiſe* guilty of a hundred faults? J.

the

the ſake of *obtaining* perfect fruit from his own act *of ſtudying*, let him return home to *aſſume* the order of a houſeholder, *or married man*. Such is the ſenſe of the text (IX 2).

A PUPIL is mentioned under *this* title of law to determine the rules reſpecting chaſtiſement of a pupil by a teacher, and ſo forth.

XII.

GO'TAMA:—THE correction of a pupil for ignorance or incapacity *ſhould be given* with a ſmall rope or ſhoot of a cane; the teacher ſhall be puniſhed by the king, if he ſtrike with any other inſtrument.

VIJNYA'NE'SWARA ſays; if a teacher, from an impulſe of wrath, ſtrike *his pupil* with a great ſtaff on a noble part, then, ſhould the pupil, hurt in a mode contrary to law, complain to the king, there exiſts a ſubject of litigation.

IF it be ſaid, that this contradicts the text cited (X), VIJNYA'NE'SWARA replies; it is not intended to forbid important ſuits on the part of pupils and the like, for in ſome inſtances their ſuits are admitted; but the litigation of teachers and the reſt *is* not laudable either in a moral or civil view; therefore pupils and others ſhould, in the firſt inſtance, be diſcouraged by the king, or the court: this is the implied ſenſe of the verſe (X); but in very important caſes, the ſuits of pupils and the reſt may be entertained in the form mentioned.

BUT others hold, that the ſuit of a teacher againſt his pupil, a father againſt his ſon, a maſter againſt his ſervant, and, by parity of reaſoning, a huſband againſt his wife, is not legal, becauſe the pupils and the reſt are dependent on their teachers and ſo forth, and may be puniſhed by them: the text (X) ſhows this very *rule*, and does not forbid the ſuit of a pupil and the reſt againſt a teacher and ſo forth; for GO'TAMA directs, that a preceptor, ill treating his ſcholar, ſhall be puniſhed (XII). The *text in* queſtion (X) ſignifies, that the pupil ſhould proceed, *in other matters*, with the

previous knowledge of his teacher. The meaning is, that a ſuit preferred before the king is irregular; and, preferred by the teacher againſt his pupil, is forbidden. But, if the pupil, or ſon, violate his duty, and the teacher, or father, being weak, is not able to correct him, it is conſiſtent with common ſenſe that he ſhould then apply to the king; for by violating his duty the pupil, or ſon, abſolutely becomes *páſhe'da or* irreligious.* This they *alſo* hold.

THE ſuit of a teacher, if his gratuity be not paid, is not mentioned by any other *author*; but hell is *the pupil's fate*, if he pay not a gratuity *to his inſtructor* (Book II, Chapter III, v. XXXIV).

FROM the text *already cited* (IX 2) *it appears, that* ſo long, (*until the ſtated ceremonies be performed,*) obedience is required, and the pupil is dependent on the teacher (v. VI, and Book II, Chapter IV, v. XV 2.). Therefore he ſhould not go any where, nor conſume any thing, without his preceptor's orders; and what he acquires by labour, ſhould be delivered to the teacher.

XIII.

YA'JNYAWALCYA:—WHEN called, let him ſtudy; and deliver what is gained, to him (namely to the teacher).

WHAT is given by him, may be conſumed; what is acquired by labour, may not be given to another: but, if *either* paternal wealth, or property acquired *by the pupil* during his minority, be given away, unknown to the teacher, or notwithſtanding his prohibition, it is *nevertheleſs* a valid gift; but there is offence in violating the prohibition.

LET him deliver what is gained, to the teacher (XIII): this is a moral ordinance; for it is placed under that head. Conſequently duty is violated, if it be not delivered to the teacher; but he cannot forcibly take it: and, ſince the pupil is the owner of that property, even what is then received as alms, may, if the ſcholar give it away, be a legal donation. If this be

* Laſtly, taking the marks of the four orders (as explained in AMERA's dictionary); but otherwiſe exempted in this work (Chapter II).

alleged,

alleged, they ſay: the ſame rule is eſtabliſhed in this caſe, as in that of learning arts (XX); the pupil is like a ſlave to his preceptor; and during that period *of tutelage* is every way dependent. But according to JI'MU'TA VA'HANA and others, it ſhould be affirmed, that what is then acquired by labour, if it be given away, becomes a valid gift; for *the caſe* is ſimilar to *that of* a wife and the reſt.

THE pupil muſt alſo perform other labour in his preceptor's houſe.

XIV.

YA'JNYAWALCYA:—LET him conſtantly promote his *teacher's* benefit by *every exertion of* mind, ſpeech, body, and action.

AND ſuch practice is ſhown, in many inſtances, in the *Mahábhárata* and other *works*.

XV.

YA'JNYAWALCYA—THOSE, who are endowed with memory, and who are void of malice, intelligent, pure, and auſpicious, ſhould be legally inſtructed, that they may be juſt, able, acquainted with what is good, and learned.

FROM this direction it ſhould be deduced, that a pupil, endued with ſuch qualities, and free from ſuch defects, having undertaken to ſtudy, cannot properly be abandoned without a fault.

VIJNYA'NE'SWARA ſays; *treating* of the pupil, apprentice, hireling, and commiſſioned ſervant, the conduct of the pupil has been firſt propounded by the text *already quoted* (XIII).

XVI.

VRĬHASPATI deſcribes an apprentice:—ARTS, conſiſting of *work in* gold, huſbandry and the like, and *the art of* dancing and the reſt, are called human ſciences; let him, who ſtudies theſe, perform work in his teacher's houſe.

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In the expreſſion, "gold, huſbandry, and the like," are comprehended *work in* wood, traffick, and the reſt. Dancing and the like include ſinging and ſo forth. In the *Chintámeni* the text is read; "arts, *as* the manufacture of veſſels of gold and the like, *and the art of* dancing and ſo forth, are called &c." In fact, ſkill in buſineſs, which requires ſtudy, but is different from *ſacred* ſcience, is *human* knowledge. This ſenſe reſults *from the text*. He ſhould perform, in the houſe of his preceptor or teacher, work relative to the art to be learned by him; as the manufacture of golden veſſels, and the like, in the houſe of an inſtructor who works in gold: not *labour* of a different nature, as the thatching of a houſe and the like.

XVII.

NA'REDA: — Let him, who wiſhes to acquire his own art, with the aſſent of his kinſmen, reſide near an inſtructor, fixing a well aſcertained period *of apprenticeſhip:*

2. Let the teacher inſtruct him, giving him a maintenance in his own houſe; and not employ him in other work, but treat him as a ſon.

"To acquire his own art;" the art ſuitable to his claſs. "A time, or period, aſcertained" by the atteſtation of witneſſes. "Not other work" but *that which is proper* for inſtruction in the art.

The *Retnácara*.

"Let him reſide near his teacher" *(ácháryaſya vaſéd antè)*: by this is expreſſed the derivation of apprentice *(antévási)*, or pupil for *inſtruction in* arts. "Giving him a maintenance:" *the compound term may be explained*, to whom ſubſiſtence is given. The teacher himſelf muſt allow a maintenance to his pupil: his own benefit is the *performance of a* duty, reputation *gained*, and ſome profit. In ſome places of the *Retnacara*, the reading is, "giving hire;" ſtill a ſubſiſtence is meant by the word "hire."

In like manner, if a pupil for *the ſtudy of* the *Védas* need a maintenance, it is proper that the teacher ſhould give it. It is not mentioned in the law, becauſe

becauſe moral duty alone is the principal conſideration of a ſtudent in the *Védas*: yet it ſhould be done; for otherwiſe duty is violated.

" But treat him as a ſon" (XVII); not like a ſlave, employ him at pleaſure.

XVIII.

Cátya'yana directs a penalty for employing *an apprentice* in other work: —He, who does not inſtruct *his ſcholar* in the art, and cauſes *him* to perform other work, ſhall incur the firſt amercement; and the pupil is therefore releaſed.

" He, who does not inſtruct his apprentice in the art;" the teacher, who, having promiſed inſtructions, but, either employiog the ſcholar much in other work, or acting from the impulſe of wrath, does not teach him the art, ſhall incur the firſt amercement; and the pupil may forſake him, and go to another teacher.

Then how is he required to perform work (XVI)? Some reply; it is not forbidden to require obedience from him: but it is forbidden to employ him in buſineſs inconſiſtent with inſtruction, and occupying much time; ſuch as travelling to many places, thatching a houſe, and the like. But others hold, that work, in the text of Vrihaspati (XVI), intends the buſineſs which is to be learned; it correſponds with the text, " the profit of whatever work he may there perform" (XX): and he ſhould be employed in ſuch labour. But if the teacher inſtruct him to the beſt of his knowledge, and do not employ him in other work, then the pupil, forſaking his teacher and going to another, ſhall be chaſtiſed.

XIX.

Na'reda:—But he, who deſerts his teacher though inſtructing him and not culpable, ſhall be compelled by forcible means to reſide *with him*, and is liable to ſtripes and confinement.

" *Corporal punishment,*" blows and the like; " confinement," or restraint: so a certain author *has explained the terms.*

The *Retnácara.*

" CONFINEMENT;" binding.

The *Chintámeni.*

FOR loss of life *(the literal sense of the first term)* would be incongruous. This is considered. The teacher should himself inflict the stripes or other punishment, according to law, not on a noble part by any means (XI 2), but with a small rope or shoot of a cane (XII). The same chastisement is proper for desertion, and for ignorance. The spiritual preceptor and pupil are similar to the teacher and apprentice, but are distinguished by the difference of *their* motives: the pupil studies the *Véda* on account of duty; the apprentice learns an art for the sake of wealth. Thus some *interpret the law.*

OTHERS hold, that a pupil may be punished by the teacher, if the pupillage were undertaken with the assent of kinsmen; for he has not tutorage, unless apprenticeship were agreed to: and here a lawsuit arises on application made to the king.

BUT in fact *it appears* from the mention of the assent of kinsmen, *that* the pupillage lasts so long as the kinsmen do not withdraw *the boy; in the mean time* correction *may be given* by the teacher: but, if his kinsmen withdraw him, a suit may be maintained; and if the pupil have no kinsmen, *still* it is inferred, that a lawsuit may arise on account of desertion.

IF, through an aptitude to learn, the pupil become perfectly instructed in his art before the expiration of his apprenticeship, he shall nevertheless serve his master the full time.

XX.

NA'REDA:—THOUGH he have learned *his art,* the apprentice must fulfil his stipulated time: and the profit of his labour during that period shall belong to his teacher.

" SRI-

" STIPULATED time," the period agreed to. " The profit of his labour;" wages or hire, and the like.

The *Retnácara.*

THE hire receivable, by the favour of the teacher, during the period of inſtruction; in that the pupil has certainly ownerſhip.

XXI.

YA'JNYAWALCYA:—THOUGH he have acquired his art, the apprentice muſt reſide in his maſter's houſe during the period ſtipulated, receiving his ſubſiſtence from the teacher, and giving to him the fruit *of his art.*

THE apprentice muſt reſide in his teacher's houſe during the ſtipulated period; that is, ſo long a time as was agreed to: *for inſtance,* "I will reſide in thy houſe four years to ſtudy the art of medicine." *If ſuch an agreement* were *made,* even though he have gained the requiſite knowledge before the expiration of four years, ſtill he muſt reſide *there.* How ſhall he reſide *there?* The anſwer is, receiving ſubſiſtence from his teacher, and applying to his benefit the fruit of thoſe inſtructions *he receives from him.* He muſt ſo reſide *in his teacher's houſe.*

The *Mitácſhará.*

HERE *it ſhould ſeem* from the expreſſion, " the profit of his labour" &c. (XX), that the teacher has ownerſhip even in what the pupil acquires by voluntary *exertion in* traffick and the like, independent of his art, and by agriculture or ſimilar means, and by treaſure-trove or other *accident.* It cannot be ſaid, that it may belong to his father, under the texts *cited in a former chapter* (Book II, Chapter IV, v. LVI), becauſe there are no grounds for ſelecting *one rule in preference to the other.* His kinſmen have aſſented to his apprenticeſhip (XVII); and, according to law, it is the duty of an apprentice to acquire wealth for his teacher. Nor ſhould it be ſaid, that the work *meant* (XX) is limited by the title, *under which the text is placed,* to the buſineſs to be learned. There is no authority for ſuch a limited conſtruction. Thus ſome *expound the law.*

BUT

But others allege, as a custom, that the fruit of what is *done* through the means of the teacher, *(in consequence of instructions,)* belongs to him; but, in the case of treasure-trove or the like, the waif is taken by the pupil. According to JI'MU'TA VA'HANA, the pupil has, in every instance, a right to *retain* what is acquired by himself: this should be considered.

XXII.

NA'REDA:—At the *expiration of the* period, the apprentice, having acquired his art, and formally delivering to the teacher the best reward in his power, departs with *his* permission.

"Having acquired his art:" this intimates that, if the art could not be learned in the time first stipulated, he should stay, again fixing a period *of further apprenticeship*; not that he should stay until the study be completed within the time first stipulated. For the stipulated period is shown to be *the* principal *consideration*, by directing the apprentice to fulfil his time even though he have learned *his art*. (XX).

When the time, or stipulated period, is expired, *the apprentice departs*, having presented a gratuity to the teacher, *after formally* walking round him; and this is done as a token of respect: obtaining his approbation to the best of his power; giving the best reward in his power, and obtaining *his instructor's* approbation; or doing that, which is the best reward for the teacher. "To the best of his power" refers to the reward.*

This *(the apprentice)* is the second labourer, *a servant* for human knowledge (IV). A servant for love is included among slaves and will be *hereafter* mentioned. NA'REDA describes the third labourer, by the name of hired servant.

XXIII.

NA'REDA: — Labourers should be considered as of three sorts; highest, middle and low: the hire of their labour should be proportioned to their strength and to the benefit *derived from their exertions*.

* The last sentence has puzzled the commentators.

A

2. A SOLDIER is the higheſt of theſe; a ſervant in huſbandry is middlemoſt; a carrier of burdens is loweſt: this is the three fold diſtinction of hired ſervant.

" *Bhacti,*" benefit. " Hire of their labour;" the wages fixed for their labour.

The *Retnácara.*

CONSEQUENTLY wages ſhould be given according to the ſtrength of the ſervant, according to the work effected, and ſo forth: for inſtance, one *hired leader*, by his own exertion, repels a hundred hoſtile armies; another repels one foreign army; their wages ſhould be proportioned to their power. " Benefit;" particular effect of ſervice, explained by the ſage himſelf; " a ſoldier is the higheſt of theſe." Or *it may mean, that* ſoldiers ſhould be diſtinguiſhed according to their principal, or inferiour charge; as the ſoldier poſted in the rear. So, in regard to the man who thatches the houſe, or who collects the graſs, or the like: their wages ſhould be paid according to their work.

XXIV.

VRÌHASPATI: — THE ſervant for pay is declared to be of many ſorts; another is the ſervant for a ſhare *of the gain.* Of all, a low, a middle, and a high rank is propounded.

2. A SERVANT hired for a day, a month, a fortnight, ſix months, or a year, muſt perform the work engaged for: and he receives the promiſed *reward.*

3. THE ſoldier is the higheſt of theſe; the ploughman is the middlemoſt; the porter is declared the loweſt, and ſo is a ſervant employed in the buſineſs of the houſehold.

4. A SERVANT of the ſecond deſcription is declared to be one hired for a ſhare *of the gain* in the ſervice of a perſon living by agriculture or by *attendance on* herds *of cattle*: no doubt he ſhall receive *a ſhare* of the grain produced, or of the milk.

THE fervant for pay is of many forts, or defcriptions; a hireling, an agent, and the like: another fervant for pay is called a labourer for a fhare *of the gain*. Thefe are the fervants for pay mentioned by VRĬHASPATI, in a former text (IV), for the labourer for a fhare of the produce is a fervant for pay *given* in the form of a fhare. Of all the fervants for pay, except the labourer for a fhare, a low, a middle, and a high rank is declared: this has been *alfo* mentioned by NA'REDA (XXIII), and fhall be explained.

HE, who undertakes fervice for one day, is a fervant for a day. So a fervant for a month. "Half," *in the text*, fignifies half a month, *or a fortnight*; a fervant for half a month *or a fortnight* fo a fervant for fix months, and a fervant for a year. "Each muft perform the work engaged for." he muft perform that very work, which the perfon ftipulated when he hired *him as* a fervant; and not, any other work. Thus, hired on a ftipulation for bringing water, he need not carry burdens, nor bring wood from the foreft, but hired on a ftipulation for bringing fuel from the foreft, he muft fetch wood. In cafe of difpute, it muft be determined by the *tenour of the* compact. But if they mutually confent *to other employment*, then every thing is proper by mutual agreement, no fuit can be maintained at a fubfequent time for the party has himfelf previoufly confented. But if a porter, hired to fetch wood from the foreft, finds imminent danger to his life in that *employment*, he has a right to quit it, notwithftanding his previous agreement If he undertook it, knowing the great rifk of life, and afterwards, again hearing of the danger, or not hearing of it, recede, what is the rule in that cafe? In the cafe of imminent danger the employer cannot compel him, if he refufe to abide by his agreement. But this rule is not applicable to foldiers and the like; for their employment is connected with rifk of life. This fhould be confidered as confiftent with reafon.

"HE receives the promifed wages" (XXIV 2). When he ftipulates lefs, or more wages, than are given by people in general for the fame work, the ftipulated hire is received under the authority of the text. If he ftipulate more or lefs wages, than are proportioned to the work, that very hire fhould be received. But an agreement for lefs, or greater wages, unintentionly

tentionally made, either by deceit through false promises, *or extorted* by force or the like, is not valid, as stipulated interest, not specially and freely promised by the debtor, need not be paid (Book I, v. XXXVII). This should be admitted and is necessary: but greater favour depends on the will of the master

Of these servants for pay, the soldier is the highest *in rank* (XXIV 3). This is not exclusive; for it is proper also to consider a person skilled in accounts as included among servants of the first rank. A ploughman and servant in husbandry are ultimately the same: nor is this exclusive; for an architect and others are entitled to a place in the second rank. "A porter &c." (XXIV 3): this is similar, since there are *other* servants declared equal to him: "and so is a servant employed in the business of the household" (XXIV 2); bringing things for the use of the household, and the like: he, who performs these various offices, is also a servant of the lowest rank: and others are also comprehended in the mode pointed out. Nor does it derogate from NA'REDA, that he has not mentioned the servant employed in the business of the household.

"ANOTHER is the servant for a share of the gain:" what is thus mentioned (XXIV 1), separates two titles. The servant, to whom food and vesture are given, and the labourer, to whom *a share of the* gain is delivered, form the double title, as will be mentioned (LXVII): and that labourer for a share is declared to be the servant of persons living by agriculture or by herds *of cattle*. This again is general; there may be servants hired for a share *of the gain* by persons subsisting by *the manufacture of* cloths and the like, *as* weavers and others; and by persons subsisting by flocks of goats, *sheep* and the like. A servant for participation is one hired for the consideration of a share. This sense of the word the sage announces: "the servant hired for a share of gain, in the service of a person living by agriculture, shall receive *a portion* of the grain produced; and in the service of a person living by herds *of cattle, shall receive a share* of the milk;" here "share" must be supplied, according to the *Retnácara*. What share? It will be mentioned in another place.

A COMMISSIONED servant is included by VRĬHASPATI among s..

for pay. In regard to him also, the rule of high and low rank is to be understood, according to the circumstances of the case. But NA'REDA describes him as the fourth labourer, and different from the hireling.

XXV.

NA'REDA:—HE, who shall be commissioned for affairs or for the superintendence of the family, should be considered as a commissioned servant; and he is *also* called a family-servant *in some instances.*

" *Things*," affairs These two *servants* are named, in judicial procedure, commissioner and family servant.

The *Retnácara.*

THE senseis, " commissioned " by the king, or other person, for affairs, such as the protection of the subjects, the receipt of his revenue, or the maintaining of an army for war and so forth, and by others also, for collecting the produce of the soil, or for the management of commodities bought or the like. The same should be understood of one appointed *to act for his principal* in a lawsuit " Commissioned " over the family is obvious, though not mentioned by him *(by the author of the* Retnácara). he, who is appointed to provide the food and clothing of the family is a commissioned servant. " These two," commissioned for affairs, and commissioned for the family. such is the meaning *of the gloss*

ARE they severally, or synonymously named commissioner and family-servant? Not the first; since commissioned for affairs would be the accepted sense of the term family-servant. Nor should it be affirmed, that this must be admitted on *the authority of* the text, for it may be otherwise applied and it is directed, at the time of affixing a meaning to a word, not to admit a sense by acceptation, when the derivative sense can be *used.*

A Rule of Philosophy —AN accepted sense, being once admitted, excludes the derivative sense, but when proposed, it is inadmissible, if the derivative sense oppose it.

NOT

Nor ſhould it be ſaid, that here ſhould be admitted a ſecondary ſenſe without loſing the literal ſignification, for that cannot be received unleſs there be ſome objection to the obvious meaning. Thus, "he," in the expreſſion "he ſhould be conſidered as a commiſſioned ſervant," being applicable to the officer commiſſioned for affairs, and to the ſervant commiſſioned for the family, both comprehended under this term *uſed* in the ſingular number, commiſſioner is a name for each of them, "and he," the ſervant commiſſioned for the family, as is obviouſly meant, is called a family-ſervant. This may be the ſenſe of the text

Nor *is* the ſecond *conſtruction admiſſible, that* "*one is a commiſſioned ſervant, the other, a family-ſervant*" For the ſervants commiſſioned for the family, excluded from the name of commiſſioner, would be excluded from the ſubdiviſion *of the ſubject, as propoſed in former texts* (III and V)

On this point it is ſaid, a ſecondary ſenſe muſt be here partially admitted, and both be comprehended even under the term family-ſervant Where the word cannot be pertinent without a ſecondary ſenſe, ſuch a meaning muſt be affixed, *but* how is it inſerted in the text for that purpoſe? in the expreſſion, "the cowpen is ſituated on the Ganges," and in ſimilar inſtances, the word Ganges being explained in the ſecondary ſenſe of its ſhore, the *Ganges*, or ſtream of water in the tract of Bhagi'rat'ha's car, is no included with the ſhore ſignified by the word Ganges This argument is wrong, for the term is here employed in a ſecondary ſenſe without loſing the literal ſignification. This is meant in the *Retnacara*, and ſhould be conſidered as accurate hence it is ſaid, "*ſo named* in judicial proceed re"

XXVI.

Nareda:—Four ſervants are declared to be thoſe, who perform pure work; but they, who do impure work, are the ſlaves of fifteen ſorts, *ſome properly ſo called, others improperly*. *

* This obſervation is added from Sir W Jones's tranſlation of the text, as cited in the *Vyavahara Mayuc'ha* where it is attributed to Vrihaspati

for pay. In regard to him alſo, the rule of high and low rank is to be underſtood, according to the circumſtances of the caſe. But NA'REDA deſcribes him as the fourth labourer, and different from the hireling.

XXV.

NA'REDA:—HE, who ſhall be commiſſioned for affairs or for the ſuperintendence of the family, ſhould be conſidered as a commiſſioned ſervant; and he is *alſo* called a family-ſervant *in ſome inſtances.*

" *Things;*" affairs. Theſe two *ſervants* are named, in judicial procedure, commiſſioner and family ſervant.

The *Retnácara.*

THE ſenſe is, " commiſſioned " by the king, or other perſon, for affairs, ſuch as the protection of the ſubjects, the receipt of his revenue, or the maintaining of an army for war and ſo forth; and by others alſo, for collecting the produce of the ſoil, or for the management of commodities bought or the like. The ſame ſhould be underſtood of one appointed *to act for his principal* in a lawſuit. " Commiſſioned " over the family is obvious, though not mentioned by him *(by the author of the* Retnácara): he, who is appointed to provide the food and clothing of the family is a commiſſioned ſervant. " Theſe two;" commiſſioned for affairs, and commiſſioned for the family: ſuch is the meaning *of the gloſs.*

ARE they ſeverally, or ſynonymouſly named commiſſioner and family-ſervant? Not the firſt; ſince commiſſioned for affairs would be the accepted ſenſe of the term family-ſervant. Nor ſhould it be affirmed, that this muſt be admitted on *the authority of* the text; for it may be otherwiſe applied: and it is directed, at the time of affixing a meaning to a word, not to admit a ſenſe by acceptation, when the derivative ſenſe can be *uſed.*

A Rule of Philoſophy —An accepted ſenſe, being once admitted, excludes the derivative ſenſe; but when propoſed, it is inadmiſſible, if the derivative ſenſe oppoſe it.

NOR

NOR ſhould it be ſaid, that here ſhould be admitted a ſecondary ſenſe without loſing the literal ſignification, for that cannot be received unleſs there be ſome objection to the obvious meaning Thus, "he," in the expreſſion "he ſhould be conſidered as a commiſſioned ſervant," being applicable to the officer commiſſioned for affairs, and to the ſervant commiſſioned for the family, both comprehended under this term *uſed* in the ſingular number, commiſſioner is a name for each of them, "and he," the ſervant commiſſioned for the family, as is obviouſly meant, is called a family-ſervant This may be the ſenſe of the text

NOR *is* the ſecond *conſtruction admiſſible, that "one is a commiſſioned ſervant, the other, a family-ſervant"* For the ſervants commiſſioned for the family, excluded from the name of commiſſioner, would be excluded from the ſubdiviſion *of the ſubject, as propoſed in former texts* (III and V)

ON this point it is ſaid, a ſecondary ſenſe muſt be here partially admitted, and both be comprehended even under the term family ſervant Where the word cannot be pertinent without a ſecondary ſenſe, ſuch a meaning muſt be affixed, *but* how is it inſerted in the text for that purpoſe? in the expreſſion, "the cowpen is ſituated on the Ganges," and in ſimilar inſtances, the word Ganges being explained in the ſecondary ſenſe of *its ſhore the Ganges*, or ſtream of water in the tract of BHAGIRATHA car, is not included with the ſhore ſignified by the word Ganges This argument is wrong, for the term is here employed in a ſecondary ſenſe without loſing the literal ſignification This is meant in the *Retnacara* and ſhould be conſidered as accurate hence it is ſaid, "*ſo named* in judicial procedure

XXVI

NAREDA —FOUR ſervants are declared to be thoſe, who perform pure work, but they, who do impure work, are the ſlaves of fifteen ſorts, *ſome properly ſo called, others improperly*. *

* This obſervation is added from Sir W JONES's tranſlation of the text as cited in the *Vyavahara Mayukha* wherein it is attributed to VRIHASPATI

2. WORK is declared to be of two ſorts, impure and pure: impure work is aſſigned to the ſlave; pure work to the ſervant.

" FOUR ſervants," a pupil, an apprentice, a hired ſervant, and a commiſſioner.

" TO the ſervant," to the pupil and the reſt of four ſervants.

The *Retnácara.*

" THOSE who perform pure work." conſequently the pupil and the reſt ſhould not be employed in cleaning the houſe and the like It appears from the ordinance, that even a hired ſervant ſhould not perform that taſk. But if any perſon, allured by temporary hire, be willing to do ſuch work, for one who has no ſlave and who is himſelf unable to perform it, may he be ſo employed? or ſhould he be included in ſome one of the deſcriptions, which will be given, of ſlaves of fifteen ſorts? He, who conſents to do the work of a ſlave, muſt perform it. in this inſtance, there is no fault on the part of the maſter. Then why has this text been propounded? When ſervants are not willing to do the work of a ſlave, then their maſter may not forcibly compel them: but when ſlaves refuſe to perform that work, he may compel thoſe *ſlaves* by forcible means. The text ſhould be conſidered as propounded for this purpoſe.

XXVII

VRIHASPATI:—CLEANING the houſe, the gate-way, the neceſſary, and the road, removing the dirt, and rubbiſh, and all other impurities,

2. Attending the maſter at his pleaſure, and rubbing his limbs, are to be conſidered as impure work, and all other work as pure.†

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* The ſecond member of the ſentence, and in the *Vyáwahára Chintámani*, immediately after the text there attributed to VRIHASPATI, and here cited as NARADA'S

† From the ſame text, which is elſewhere cited. The next text is tranſlated freely

THOUGH

THOUGH it be ſaid in this text, that all other work is pure, yet there is no excluſion of other *work not ſpecified*.

XXVIII.

CA'TYA'YANA:—THE ſons of ſlaves muſt abſolutely do the work of removing urine and ordure, attending their naked maſter, and handling cows and the like.

THE *ſuppoſed* limitation in the preceding text is done away by the additional mention of attending a naked maſter and handling cows and the like: and it is confirmed, that the cuſtomary office of removing the dirt of the body and the like is comprehended *in the texts*. However applied, the rule is not infringed; ſince the texts are intended only as examples.

"ATTENDANCE on the naked maſter;" handing clothes to him.
The *Retnácara*.

"ATTENDANCE on the naked maſter;" rubbing his limbs while naked.
The *Párijáta*.

BOTH interpretations ſhould be admitted; for they are proper. But, on the explanation given in the *Párijáta*, naked is unmeaning; for no other, than a ſlave, rubs the limbs of a maſter though he be not naked.

SOME remark, that, on a thorough examination of the texts, *it appears that*, where a perſon is hired, the performance of pure work conſtitutes a ſervant, and the performance of impure work conſtitutes a ſlave: and a hired ſervant, doing the impure work deſcribed by the text, ſhould be conſidered as a ſlave. Others hold, that ſlavery depends on the particular relation of property; and ſervice, ſolely on the engagement of the ſervant. If it be ſaid, there is authority even over a ſervant; *they anſwer*, this authority is not a cauſe of ſimilar dependence; it is the relation of command, *not of property*. Nor ſhould it be objected, that a ſimilar relation may extend alſo to a wife or a ſon. For they are diſtinguiſhed; or that is barred by the epithet of ſervant: and many do not admit the hire of ſlaves. As for *making* the admitted difference

ference of dependence to constitute slavery, they deny it; for it would not extend to slaves born in the house, and so forth.

THESE four servants are called persons bound to obedience. NA'REDA now explains the slave, or fifth description of persons bound to obedience.

XXIX.

NA'REDA:—ONE born *of a female slave* in the house *of her master*, one bought, one received *by donation*, one inherited *from ancestors*, one maintained in a famine, one pledged by a *former* master,

2. One relieved from great debt, one made captive in war, *a slave* won in a stake, one *who has* offered *himself* in this form "I am thine," an apostate from religious mendicity, *a slave for a* stipulated *time*,

3. One maintained in consideration of service, a slave for the sake of his bride, and one self-sold, are fifteen slaves declared by the law.

"BORN in the house;" born of a female slave in the house *of her master*. "Bought" for a price. "Received;" or acquired, by the acceptance of donation and the like. "Inherited;" a slave of the father, or other ancestor, passing by succession to the son, or other *heir*. "Maintained in a famine;" in a season not good, at a time, when provisions are dear, or, *in stb r wards*, during a dearth; then maintained: that is, whose life has been preserved for servitude by food *then* given. "Pledged by a master;" his own slave pledged by the master to a creditor, for a loan received, *to be* his slave during the period of the loan. "Relieved from great debt;" redeemed from *his* creditor's custody on account of a great debt, and therefore becoming a slave. "Made captive in war;" *one to whose* life has been preserved by *his* consenting to slavery, when in danger of *his* life in battle; *and thus* acquired by the conqueror. "Won in a stake;" overcome after an agreement in this form, "if I be overcome in this contest, I am thy slave." Who has offered himself in this form,

"I am

"I am thine;" delivering himself in this form "I am thy slave," through desire of money or the like. "An apostate from religious mendicity," quitting the state of a mendicant. "Stipulated," *slave* for a stipulated time; who has fixed a period in this form, "I am thy slave for so long a term," and so forth. "Self-sold," who has sold himself. These slaves of fifteen sorts are declared by NA'REDA. The text is thus explained according to VIJNYA'NE'S'WARA, CHANDESWARA, VA'CHESPATI, and BHAVADE'VA.

"WON in a stake," won by gaming.

[1]The *Prucasa* and *Parijáta*.

"BOUGHT" and "received" *may* also *mean boys* purchased or received for adoption, *but who have* become slaves through some failure in the form prescribed by the law. In that instance, "received" signifies given by the father and mother, and he, who is self-given, is one who has offered himself in this form "I am thine:" he will be mentioned by this *description*. "Maintained in a famine," and who has consented to slavery: but of him, who has not consented to become a slave, the servitude is not admitted by VIJNYA'NE'S'WARA; for he particularly mentions consent *as a requisite condition*: and that is proper, since there is no proof of dominion acquired by maintenance alone. Yet persons bought, or received, may become slaves, although they did not consent to it at the time; for they are in subjection, and cannot *now* become sons *after a failure in the forms of adoption*.

IF it be said, they should become servants, else, a *Bráhmana* might become a slave, though his class be exempted from slavery: therefore persons bought, or received, if they have not consented to become slaves, should not perform *impure work*, such as attendance on their naked master and the like: the answer is, the slavery of a boy, who has consented to adoption, being admitted by a text cited in Part II (Book V, v. CLXXXII) if the rites of *adoption* be not duly performed, servitude in general does really occur also in the case of persons bought or received, *if the adoption fail*. In fact, since he is taken for adoption, he should perform the office of a son; but he becomes a slave, if he be excluded *(in consequence of a failure in the adoption)*

from the rites ordained by the *Vedas*, such as obsequies or the like. This is proper.

" PLEDGED by his master " (XXXI): but he, who receives a loan on pledging himself, is of the same description, and he is a slave, if he have agreed to it for subsistence. but not otherwise, *for* he is a servant, if he have agreed to service *only*.

" RELIEVED" from debt this occurs in redemption from a debt due to another, and in remission of a debt due to *the master* himself, in consideration of the debtor's becoming a slave but a purchase results from the remission of a debt due to the master himself. However, it is so explained by authors. " Relieved from great debt' *comprehends* rescued from distress of other kinds.

" WON in a stake:" it is observed by authors, that *the verb* is used under the rule they quote, that verbs of this particular class are employed in the secondary passive But in fact it is also used in the primary passive, under another rule therefore, in a stake thus set, " if I be overcome, I give thee that slave belonging to me," the winner becomes the owner of the slave

A SLAVE, who offered himself in this form, " I am thine," is of two sorts; with or without, a stipulated time. Thus, " so long as I serve thee as a slave, so much money shall be paid monthly," or, " I will serve thee, as a slave, one year." in these forms are two sorts of slave offering himself in these words " I am thine," *one* for a stipulated period, and *the other* for an indefinite time. But the slave for a fixed term, as subsequently described, uses a similar form of speech.

THIS may be understood of the slave made* by the par[illegible]lf, like a son made, *or adopted*, as described by [illegible]Book V, v C[illegible]V) A son made, *but whose adoption is* not *com*[illegible]*ing to legal* [illegible]includ-

* *Crita*, or made, has been ex[illegible]ed, for a stipulate[illegible]., stadmi[illegible]
Here proposed by the com[illegible]

ed under ſlaves made; how this interpretation can have been omitted by authors, may be queſtioned.

An apoſtate mendicant is a ſlave to the king.

XXX.

Ca'tya'yana:—Where men of the three twice-born claſſes forſake religious mendicity, let the king baniſh a man of the ſacerdotal claſs, and reduce to ſlavery a man of the military or commercial tribe.

Misra and Chande'swara explain *the term uſed in the text*, the *Cſhatra* and *Vis*, *or* Cſhatriya *and* Vaiſya, collectively. Thus a man of the ſacerdotal claſs is ſlave to none; but the *Cſhatriya* and *Vaiſya* become ſlaves to the king.

XXXI.

Dacsha:—If a man, after aſſuming religious mendicity, abide not by his duty, let the king cauſe him to be lacerated by the feet of dogs, and immediately baniſh him.

Deviation from his duty occurs when he takes a wife, like a houſeholder; and in ſimilar inſtances. That ſhould be diſcuſſed under the title of baniſhment.

"A slave for the ſake of his bride" (XXIX 3): a man who acquieſces in ſlavery for the ſake of love, as mentioned by Vrihaspati (IV 1).

XXXII.

Vrihaspati defines that *ſlave*:—But the man, who cohabits with the female ſlave of another, ſhould be conſidered as a ſlave for *the ſake of* his bride; he muſt perform work for her maſter, like other ſlaves, or like ſervants for pay.

As

As a ſervant for pay (that is, a hireling), or as a ſlave, performs work for his own maſter, ſo muſt he ſerve his wife's maſter.

XXXIII.

MENU: — THEREE are ſlaves of ſeven ſorts; one made captive under a ſtandard, *or in battle*, one maintained in conſideration of ſervice, one born *of a female ſlave* in the houſe, one ſold, or given, or inherited from anceſtors, and one enſlaved by way of puniſhment.

"MADE captive under a ſtandard," conquered in battle. As in the chapter concerning *Virat, (in the* Mahábhárata,) BHÍMASÉNA thus beſpoke a king called SUSERMA, vanquiſhed, during the war which aroſe from the ſeizure of a cow on the ſouth of *Virát*.

FOOL! if thou deſireſt life, hear from me the conditions: thou muſt declare before a ſelect aſſembly, and before the multitude, "I am a ſlave."

2. On theſe terms will I grant thee life. This is a ſettled rule for him, who is conquered in battle.

CONSEQUENTLY, ſince BHÍMA requires his declared acquieſcence, one, who agrees to it, becomes a ſlave, not, every perſon conquered in battle *whether he take quarter or not*; and this, *in the text of* MENU, comprehends perſons won in a ſtake.

"MAINTAINED in conſideration of ſervice," who has agreed to ſlavery in conſideration of maintenance, whether in a ſeaſon of ſcarcity or abundance. "Born in the houſe." born of a female ſlave in the houſe. "Sold" by his father and mother, or by either of them, or "ſold" by himſelf. "Given" by his father and mother, or by either of them, or ſelfgiven. and he, who agrees to ſlavery in conſideration of relief from diſtreſs, is ſelfgiven, for he gives himſelf on account of the favour conferred in delivering him from diſtreſs. "Inherited from anceſtors," (literally paternal), deſcended in ſucceſſion

ceſſion from the father or other predeceſſor. "Enſlaved by way of puniſhment:" who has agreed to become a ſlave to acquit a fine, under the text of MENU.

XXXIV.

MENU: — A MAN of the military, commercial, or ſervile claſs, who cannot pay a fine, ſhall diſcharge the debt by his labour: a prieſt ſhall diſcharge it by little and little.

BUT an apoſtate from religious mendicity is alſo enſlaved by way of puniſhment; for CA'TYA'YANA directs, that a *Cſhatriya* and *Vaiſya* ſhall become ſlaves of the king, to atone for the offence of apoſtacy from religious mendicity (XXX).

IT muſt here be conſidered, that it does not appear, from that part of CA'TYA'YANA's text (let the king reduce to ſlavery a man of the military or commercial claſs), that the king ſhall make him his own ſlave: he may cauſe him to become the ſlave of another; for this would be no infraction of the rule. But, on the queſtion, whoſe ſlave does the apoſtate from religious mendicity become? ſlavery to the king is ſuppoſed by CHANDE'SWARA to be denoted by the terms of CA'TYA'YANA's text. The meaning there is, let the king enſlave him; on the queſtion, to whom ſhall he be a ſlave? ſince this muſt be comprehended *in the text*, and ſince no other perſon is mentioned, he takes him as his own ſlave.

IS there not an inconſiſtency with the text of NA'REDA; for he further mentions the ſlave for the ſake of his bride, and a ſlave pledged by his maſter (XXIX)? Some reply, the texts are intended to propound their ſervitude, not to enumerate the ſlaves; for they are ſo explained by VIJNYA'NE'S'WARA. The ſervitude of ſeven perſons is ſhown in the text of MENU (XXXIII), *it is* not *implied* that others beſides thoſe ſeven are not ſlaves. His text precludes a leſs number; not a greater number: for an explanatory enumeration permits a greater number.

OTHERS hold, that a ſervant for the ſake of his bride, acquieſcing in

 ſervitude

fervitude through love, and giving himſelf into ſlavery for the gratification of his luſt, is included under "one given" (XXXIII): and in him, who is pledged by his maſter, the property of the creditor is not acknowledged, but uſufruct with the aſſent of the debtor. After the ſtipulated period, if the debtor do not redeem a pledge *given* for a fixed time, it becomes the creditor's property: how *then* are the ſlaves deſcribed by NA'REDA comprehended in the text of MENU? but VIJNYA'NE'S'WARA admits the creditor's property in a pledge, even within the period of the mortgage; ſurely on his opinion, *they are* not *all* comprehended in MENU's text. *To this objection the anſwer is*, there is no proof of the creditor's property in a pledge within the period for which it is hypothecated; but, after that period, his property is acknowledged; and it ultimately becomes a ſecondary, or inferiour, ſale. Thus, if the agreement be in this form, "ſhould I not redeem the ſlave at the expiration of the fifth year, this ſlave, and this property, belonging to me, ſhall be thine;" the principal ſum being conſidered as the price, there is in fact the complete act of relinquiſhment at a ſubſequent time, after a prior receipt of the price. It muſt be admitted by VIJNYA'NE'S'WARA and the reſt, *that it means pledged* for the payment of a debt due to the man himſelf; for redemption from a debt to another is implied by "one relieved from great debt" (XXIX).

THUS the texts of MENU and NA'REDA correſpond: but NA'REDA has mentioned fifteen ſorts as an enlarged explanation, and to form the *neceſſary* diſtinctions in regard to the enfranchiſement of ſlaves.

SECTION II.

ON EMANCIPATION FROM SLAVERY.

ARTICLE I.

ON ENFRANCHISEMENT OF SLAVES.

XXXV.

NA'REDA:—Of thoſe *ſlaves* the firſt four *(one born in the houſe, one bought, one received, and one inherited)* are not *of right* releaſed from ſlavery: unleſs they be *emancipated* by the indulgence of their maſters, their ſervitude is hereditary.

2. That low man, who, being independent, ſells himſelf, is the vileſt of ſlaves; he alſo cannot be releaſed from ſlavery.

Literally "there;" that is, among thoſe ſlaves; the firſt quadruple ſet *is not emancipated;* collectively, one born of a female ſlave in the houſe, one bought, one received in donation or the like, and one inherited from anceſtors: theſe cannot be releaſed, unleſs they be emancipated by a maſter, whoſe life has been endangered, *but has been ſaved by the ſlave;* for the enfranchiſement of ſlaves of all ſorts, in that caſe, will be mentioned.

"Indulgence" *is explained* in the *Retnácara*, affection. Conſequently the ſlave born in the houſe, and the reſt, may be liberated, if the maſter be ſatisfied: but not otherwiſe. Since one maintained in a famine and the reſt are not comprehended, in the text of Na'reda, under ſlaves received in donation and the like, they may be liberated. But it ſhould alſo be inferred, that a boy, received for adoption as a ſon given, and ultimately becoming a ſlave through a failure in *the* forms *of adoption*, is not liberated without favour; ſince he alſo is one received *in donation*.

"Inde-

"INDEPENDENT" (XXXV 2); *explained* in the *Retnácara*, his own master. Consequently there is no fault on the part of a dependent person, subject to his father and mother.

"HE also cannot be released from slavery" (XXXV 2): that is, one, who sold himself, cannot be released from slavery. Hence emancipation is denied to five *slaves*. The separate mention of one bought and one self-sold is intended to denote a greater offence in the person who sells himself; but there is no offence on his part, if he sell himself for a religious purpose.

Márcandéya purána:— IF I enter the flames unknown to the *Cháńdála*, I shall again become his slave in *another* birth.

THIS is a reflection of the universal monarch HERIS'CHANDRE, who had become the slave of a *Cháńdála* to pay the sacrificial fee, after giving his whole property to the holy sage VIS'WA'MITRA, and who wished to commit himself alive to the flames, with his wife, through affliction at the accidental death of his infant son RO'HITA'S'WA. "Unknown to the *Cháńdála* &c:" that is, since a slave is dependent in *all* acts generally, he is not liberated even by voluntary death.

ON this MISRA remarks, that "the speech of HERIS'CHANDRE regards the misconduct of a slave; else he could never be released from slavery *under any circumstances*." It should be considered, that a slave is liberated by death; *but*, since it is shown by implication, in the *Márcandéya-purána*, that a slave is dependent even in regard to *life and* death, his suicide, though allowed by the law, would produce immoral consequences; hence, as a man is debtor to his creditor even in another birth, so he would become the slave of his former master. Yet, if his death happen by the act of GOD, he would be liberated from slavery; for there is no proof of the state of slavery continuing in another birth, and the connexion of servitude is *in general* limited to the period of life. As for the observation, that else he could not be released from slavery, it should be considered, that, by the favour of deities, he may be released from slavery, if he adhere to his duty. All this regards another world; there is not much use in further discussing the question.

XXXVI.

MENU :—A *Súdra*, though emancipated by his master, is not releaſed from a ſtate of ſervitude; for of a ſtate, which is natural to him, by whom can he be diveſted?

THE meaning is, even by the owner's favour, a *Súdra*, born of a female ſlave in the houſe, or otherwiſe included in the quadruple ſet, or *become* a ſervant of the loweſt rank, cannot be releaſed.

AND a ſlave is not releaſed from ſervitude without favour. There is no inconſiſtency, if this be applied to others, beſides a *Súdra*, but born of a female ſlave in the houſe, or the like.

The *Retna ara.*

EMANCIPATED by him, to whom he had become a ſlave by capture in war or the like, a *Sudra* is not releaſed from a ſtate of ſervitude to *Bráhmanas*. Since ſervitude is natural to him, who can diveſt him of a ſtate of ſlavery proper to the ſervile claſs? Hence it is neceſſary, that obedience be paid by a *Sudra* to a *Brahmana*, or twice-born man. This is intended, elſe the ſubſequent enumeration of ſlaves would be nugatory.

CULLU'CABHATTA.

WHEN ſome *Bráhmana*, becoming very poor, emancipates a ſlave, is he not liberated? As a ſon, ſo a ſlave ſhould not be forſaken. When, in very great diſtreſs, a man releaſes a ſlave, ſtill, although the ſlave any how provide his own ſubſiſtence by other work, he muſt return when his maſter recalls him, and perform the duties of ſervitude the text is intended for this purpoſe. It is implied in CULLU'CABHATTA's expoſition, that, if the *Sudra* ſay, "becauſe I have been abandoned by thee, therefore I will not do thee ſervice," then the king ſhall compel him to *diſcharge the duties of* ſervitude Elſe the ſubſequent enumeration of ſlaves would be nugatory. Such is the meaning. If the ſenſe of the ordinance be, "ſince he belongs to the *ſervile claſs*, he is the ſlave of twice-born men, therefore the king ſhall cauſe him to be employed in ſervice, however reluctant," then the particular alluſion of this text to one made captive under a ſtandard, and to

one maintained in consideration of service, would be unmeaning: for the servitude of others, besides those made captives under a standard and the like, results even from their servile class. It must however be considered, that the text, *which enumerates slaves* (XXXIII), can also be applied to others besides *Sudras*.

XXXVII.

MENU:—BOTH him of the military, and him of the commercial class, if distressed for a livelihood, let some wealthy *Brâhmana* support, obliging them without harshness to discharge their several duties.

2. A *Brâhmana*, who, by his power and through avarice, shall cause twice-born men, girt with the sacrificial thread, to perform servile acts, without their consent, shall be fined by the king six hundred *panas*.

IT should not be objected, that the servile employment of others than *Súdras* being forbidden by these texts of MENU, slavery is limited to this class; and the slavery of one made captive under a standard should be established for *Sudras* only: and the sense of these texts is, that a *Brâhmana* should with tenderness support a *Cshatriya* or *Vaisya* distressed for a livelihood, but employ them in their own several duties; that is, employing a *Cshatriya* in military service or the like, and employing a *Vaisya* in commerce and so forth, he should maintain them. Consequently, this sense of the text being also inferred as a matter of course, the text is delivered as a rigid precept. It appears therefore, that a wealthy *Brâhmana*, having occasion for the service of a soldier or the like, should he, from anger or any other motive, omit to support those persons, shall be amerced. He must oblige the *Cshatriya* and *Vaisya* to discharge their several duties, not to perform servile acts. This also is a rigid precept, which the legislator delivers in the second verse. If he cause twice-born men, girt with the sacrificial thread, to perform servile acts without their consent, he shall be fined six hundred *panas:* and this, *in the objector's opinion*, agrees with CULLU'CABHATTA's exposition.

IT

It is answered, the expression, "without their consent," admits servitude with their consent: and servile acts may be performed for a *Bráhmana*, by a man of the military or commercial class, from religious motives. As is related in the *Mahábhárata* and other works, that Crishna, an incarnation of the divinity, who took upon himself the human body, and accepted the customs of the world, did present water to wash the feet of *Brahmanas*. The author of the *Retnácara* also observes on the words, "cannot be released from slavery" (XXXV), that they regard others besides *Súdras*, *but* born of a female slave in the house and the like.

If an independent *Bráhmana* employ a *Vaisya* and a *Súdra**, hired as servants for military duties or for commerce or the like, in washing his feet, against their will, he shall be amerced. Such is the sense, as appears from the use of the term, "by his power" (XXXVII 2).

Then, if a *Súdra*, at any time, do not perform servile acts for a *Bráhmana*, ought he to be forcibly employed in his service? It appears from the expression, "cannot be released from a state of servitude," that the state of servitude, which has already occurred, cannot be annulled. But, in this case, the man has not become a slave; what then shall be annulled? This should be considered.

It should not be objected, that the state of servitude was born with him, because that is intimated by the words, a state which is natural to him (XXXVI); and accordingly the servitude even of one unbought is admitted by the following text.

XXXVIII.

Menu: — But a man of the servile class, whether bought or unbought, he may compel to perform servile duty: because such a man was created by the self-existent for the purpose of serving *Bráhmanas*.

The expression, "a state which is natural to him," has no such meaning *as*

* So the MS. It should be *Cshatrya* or *Vaisya*.

supposed

suppoſed in the objection. What does it mean? When a `*Súdra* is born, is ſervitude to all *men* born with him? Or ſervitude to no one in particular, but general, and *by which* he afterwards becomes the ſlave of him who takes him? Not the firſt; were it ſo, that `*Súdra* might be taken as a ſlave by all twice-born men; and if any `*Súdra*, not ſerving any perſon, were accidentally ſtarved or the like, it would be a ſin on the part of all twice-born men: a perſon cannot compel any `*Súdra*, *whom he meets* on the road, to perform ſervile duty. Nor *is* the ſecond *suppoſition right*; for, ſervitude requiring a permanent connexion, there cannot be a ſtate of ſervitude without a maſter *to be ſerved*: conſequently it is proved, that the ſon of a female ſlave forſaken by her maſter is not, at the moment of his birth, ſlave to any man. Even though a ſtate of ſervitude were admitted to belong to that `*Súdra*, there would be no uſe in *thus ſuppoſing* a perfect, but unconnected, ſervitude; for, even though he were a ſlave generally, yet, unleſs he be received *in donation or otherwiſe* by any one man, he cannot be forcibly ſeized by him.

On this point the *beſt* opinion is this; as property in gold, ſilver, and other effects received, may be deveſted by gift, ſale, or other alienation; but not the dominion over a wife, though received like gold or the like; (for a huſband and wife are not divorced by deſertion or neglect;) ſo a ſlave alſo is not emancipated. But that is technical, not actual: for, during the period of deſertion, there is no ſin on the part of his maſter in not ſupporting him; and his maſter has no power over wealth *then* acquired by him. "A ſtate natural to him" (XXXVI) is mentioned as a cauſe: and "natural" ſignifies produced at the creation, when the ſervile claſs was produced; *namely*, his *natural* ſubſiſtence by ſervile attendance.

If any ſlave, emancipated by his maſter, has undertaken ſervile attendance on ſome other perſon, and afterwards the former maſter claims him; what is the rule in that caſe? He belongs to the ſecond maſter, becauſe, in fact, he accepted *his ſervice* at the very moment, when his *former* ſervitude was ceaſing. What is ſaid of a *Bráhmana* compelling a man of the ſervile claſs to perform menial offices (XXXVIII), is intended to authorize the ſervitude of a `*Súdra*, after forbidding that of a *Cſhatriya* and a *Vaiſya*. By the expreſſion "compel him to perform ſervile duty," is declared the propriety of

employing a *Súdra* in menial offices, whether bought or unbought: the word "bought" implies slave in general; "unbought" denotes hired servant and the like; consequently there is no offence in employing him on slavish work, though he be a servant *only*. This is expressly declared.

UNTIL a *Súdra*, emancipated by his master, be taken by another, as thus explained, he may be remanded: and a *Cshatriya* and *Vaisya* may be employed in servile duties with their consent: they may be released from servitude by the favour of their master, and cannot be again seized without their own consent. A master employing a *Súdra*, whether be be a hired, or a commissioned servant, in menial offices, shall not be amerced; but if he employ a *Cshatriya* or *Vaisya* in servile duties, against their will, he shall be amerced. Such is the concise statement *of the law*.

THAT one born of a female slave in the house, one bought, one received in donation, and one inherited from ancestors cannot be released from slavery, has been declared: NA'REDA next declares that one, who gave himself in this form, "I am thine," cannot be released from slavery.

XXXIX.

NA'REDA: — OVER the slave, who, having given himself in this form, "I am thine," goes *to another, the second master* does not acquire *absolute dominion:* at pleasure the former owner may reclaim him.

THIS must be understood of a slave, who goes of his own accord, without *emancipation by* the favour of his master.

"SLAVE;" *literally* one not his own master. "If he go to another person;" if he go to become a slave; in that case the former master may claim that slave: and the other master, though be have received him, does not obtain him *as a slave*. But emancipated by the favour of his master, he may be released from slavery. This should be affirmed; else it would be unequal, that one born in the house and the like may be released from slavery, and that one, who offered himself in this form, "I am thine," should be incapable of freedom.

It may be *admitted*, that by their master's consent, a *Cshatriya* and a *Vaisya*, who have voluntarily undertaken servitude, may be released from slavery, and be received by another; but a *Súdra* may not be taken by another master; for it is declared by Menu, that a *Súdra*, though emancipated by his master, is not released from a state of servitude. This inference is denied. Since there is no proof of the former master's property after emancipation, an unowned slave may be received: and, a second property arising, both have not a distinct ownership. The title of both is absolutely similar; but the right of the second master subsists, because the slave has not been emancipated by him; therefore, without his consent, the former owner is prevented by this text (XXXIX) from seizing the slave.

It should not be objected, that the text of Menu (XXXVI) shows the former owner's property in a slave, though forsaken by him; hence a second master acquires no property in a slave still appertaining to a former owner: for one peculiar right precludes another of the same nature. Property in an enfranchised slave, causing dependence and the like, is not literally admitted. That *another* may take him again into service, though enfranchised, is implied in the text of Menu (XXXVI); else, an enfranchised slave not being forsaken by his former master, the *Súdra* would be deprived of a livelihood, since he could not be received by another: or the householder would be guilty of sin in not supporting the slave, though voluntarily dismissed; since there could be no relinquishment annulling his property.

If *it be* admitted, that a right, called ownership, over the liberated slave, *subsists* to authorize the master to remand his slave, wherever he reside, *even* after he has found a livelihood by alms and the like, still there is nothing inconsistent with the right of the second master; for his property is of a different nature. But, in fact, no different title is admitted; for it may be explained by *supposing the* property annulled; and *another interpretation* would be inconsistent with *the notion of* a second master. The text of Menu (XXXVI) intimates the taking *of him* again *into service*, after emancipation from his last master, as well as from his first; for no distinction is expressed. Thus, according to authors, any slave, emancipated by his master, received by another, and emancipated by him also, may be taken by his former master.

On

On the opinion, in which the ſlave for a ſtipulated time is oppoſed to him who gives himſelf in this form, "I am thine," this text (XXXIX) regards a ſlave for an indefinite term, as well as a ſlave for a definite time whilſt the period *ſtipulated* is unexpired. A ſlave for a definite term is liberated after the period expires. But, according to authors, the ſlave for a ſtipulated term, as diſtinct from him who offered himſelf in this form "I am thine," is not intended by this text (XXXIX). This ſhould be admitted.

XL.

NA'REDA:—THEY, who are ſtolen and ſold by thieves, and they, who are enſlaved by force, ſhould be liberated by the king: their ſlavery is not admitted.

STOLEN by a robber in their infancy, or by a thief, and ſold by him, but remaining ſilent at the time of the ſale through apprehenſion of ill treatment from the robber, and afterwards telling the circumſtances to obtain their freedom, *theſe* ſlaves ſhould be releaſed; and, if the maſter refuſe their diſcharge, they ſhall be liberated by the king: and *they*, who are enſlaved by force, (*Súdras*; and *Cſhatriyas*, or *Vaiſyas*, employed in ſervile work without their conſent;) ſhall alſo be releaſed by the king.

IF a potent robber, ſeizing any perſon, ſell him; and the perſon ſold remain ſilent; in that caſe he ought not to be liberated by the king, becauſe the purchaſe was *made* through the fault of the perſon ſold. This is denied; for, whether he have conſented or not, the validity of his act under the impulſe of fear is not admitted by YA'JNYAWALCYA (Book II, Chapter IV, v. LVIII).

XLI.

YA'JNYAWALCYA:—ONE enſlaved by force, and alſo one ſold by robbers, is releaſed from ſlavery.

THIS text of YA'JNYAWALCYA (XLI) is cited by VIJNYA'NESWA'RA in this manner; "the legiſlator declares the law applicable to the ſlave and apprentice."

apprentice." Consequently his meaning is, that one forcibly taken as a pupil is also released. But an apprentice is not suggested by the literal sense of the text; for he is not a slave, nor is he bought. However, a pupil is comprehended in the rule by parity of reasoning; and the obvious argument, noticed by this author, is also observed by us: moreover, should any person, forcibly taking one fit to receive instruction in arts, compel him to reside in his house, and employ him in work; or if any person, not having authority over the boy, to please a teacher of arts, deliver to him another's child (without the knowledge of the father and mother) to receive instructions in an art, in those cases also his apprenticeship is null. This is implied. VIJNYA'NE'S'WARA's meaning is this; it appears from the legislator's propounding the duty of an apprentice, after this text (XLI), by the verse cited in the preceding section (XXI), that an apprentice is also implied in this text.

BUT others say, that VIJNYA'NE'SWARA, author of a commentary on the collected texts of YA'JNYAWALCYA, having premised the five descriptions of persons bound to obedience as delivered by NA'REDA, and not finding any mention of pupil, and of hired and commissioned servants, in this chapter *of* YA'JNYAWALCYA, says, "he declares the particular law respecting slaves and apprentices:" therefore one verse (XLI) relates to slaves; the other verse (XXI) relates to apprentices.

THIS might be suitable, if it were not repeated, when citing the other verse (XXI), "he declares the duties of an apprentice." In fact, from his use of the term "applicable," ("he declares the particular law applicable to the slave and apprentice:") the commentator hints another opinion: it may, or it may not, be so; *still* compulsive apprenticeship and the like must be null under the general text (Book II, Chapter II, v. X). This we deem *a* proper *exposition.*

"AND also one sold by robbers" (XLI): it is the opinion of VIJNYA'NE'S'WARA, that under the word "also," one pledged and one given are likewise released: and it should be understood, that a person won in a stake from a robber should also be discharged.

NA'REDA

NA'REDA declares the mode of emancipation for all ſlaves.

XLII.

NAREDA: — AMONG thoſe, whoever reſcues his maſter from imminent danger of his life, ſhall be releaſed from ſlavery, and ſhall receive the ſhare of a ſon.

AMONG thoſe ſlaves of fifteen ſorts, whoever delivers his maſter from danger of life, is releaſed from ſlavery, whether he be a ſlave inherited from anceſtors, or be of another deſcription This is the general cauſe of enfranchiſement of all ſlaves, as mentioned in the *Mitacſharà*, on explaining the text of YA'JNYAWALCYA (XLIV), "he, who ſaves the life of his maſter attacked by robbers, by a tiger, or the like, ſhould be emancipated" Therefore the conſtruction is, among theſe ſlaves above deſcribed, (one born of a female ſlave in the houſe, one bought, one received in donation, one inherited, and one, who offered himſelf in this form, "I am thine,") whoever reſcues his maſter &c. This conſequently obviates the bad interpretation, that one maintained in a famine, or the like, is not releaſed from ſlavery on reſcuing his maſter from danger of life, for, in compariſon with one maintained in a famine, the ſervitude of one inherited or bought is more rigidly permanent. and the emancipation of one, who ſaves his maſter's life, is mentioned generally by YA'JNYAWALCYA.

WITHOUT *the* conſent *of his maſter* to his emancipation, he is not releaſed from ſervitude on ſaving his maſter's life, this conſent alone effects his releaſe from ſlavery. ſuch is the induction of common ſenſe, for preſervation of life, and every other ſervice, is incumbent on a ſlave bought. If this be affirmed, the anſwer is, no ſuch rule can be eſtabliſhed without *authority from* the text of a ſage, or of an *eſteemed* author.

A MASTER and ſervant, ſkilled in ſwimming, are croſſing a river to go to another village. The maſter's apparel accidentally becoming looſe, his power *of ſwimming* is loſt, while he is buſied in making faſt his apparel; and he is unable to paſs the remaining part of the river, meaſured by five or ten cubits *from the ſhore*, he is, however, landed by the ſervant, who had

croſſed before him, with the help of a boat or the like found on the ſhore. In this caſe is he releaſed from ſervitude, or not? It ſhould not be affirmed, that he is releaſed from ſervitude, in this caſe, under the authority of the ordinance: for it would be inconſiſtent with approved uſage.

On this point, ſome obſerve, that, where a ſlave, neglecting his own ſafety, and highly valuing his maſter's life, reſcues him from the encounter of a tiger or the like, and is himſelf preſerved by the act of God; in that caſe he is releaſed from ſlavery. But if ſome perſon attempt to deſtroy a man by poiſon, and the ſlave of that man, diſcovering it, prevent him from eating the poiſoned food; or if the maſter intended to go out of his houſe, not aware of a tiger ſtanding at the door, but his ſlave, ſeeing the tiger, prevent him; in theſe, and ſimilar caſes, it may be admitted, that he is not releaſed from ſervitude. This ſhould be examined.

"And ſhall receive the ſhare of a ſon" (XLII); like a ſon, he ſhall receive a ſhare of that man's wealth. That the ſlave ſhould, like a ſon, take the heritage of a *Brálmana*, ſeems contrary to reaſon; but ſhould be allowed, becauſe it is admitted by Vijnya'ne'swara. Thus, in the chapter on the adminiſtration of juſtice, or forms of judicial procedure, after premiſing ſlaves from the womb, and the reſt, he ſays, "ſince it is declared by Na'reda, that whoever reſcues his maſter from imminent danger, ſhall be releaſed (XLII), what ſhould bar his ſuit againſt his maſter, if he be not releaſed, or if the ſhare of a ſon be not given?" Therefore no doubt ſhould be entertained on what is expreſſed by the text, in the ſenſe *thus* inveſtigated by authors. However, in ſome places no ſuch uſage ſubſiſts on *the occaſion of* benefits received from ſlaves: and therefore, in whatever country it is not cuſtomary to give a ſon's ſhare *to a ſlave*, in that country, if a benefit be received from any ſlave, the ſhare of a ſon ſhould not be given to him (Book I. v. XCVIII.)

In the *Retnacara* and other works this text (XLII) is cited; but nothing particular is ſaid reſpecting it.

XLIII.

XLIII.

NA'REDA:—ONE maintained *in* a famine is releaſed from ſervitude, on giving a pair of oxen; for what was conſumed in a famine, is not diſcharged by labour *alone*.

"ONE maintained in a famine," or ſaved from death by food ſupplied during a ſcarcity of proviſions, is liberated by the *gift* of a pair of oxen. The reaſon is aſſigned; what was conſumed during the famine, is not diſcharged by his labour *alone*, but requires ſome other payment: and that, under the authority of the text, is the gift of a pair of oxen. Such is the conſtruction according to CHANDE'SWARA. Conſequently one maintained in a famine, deſiring emancipation from ſervitude, muſt give a pair of oxen; ſo much is the conſideration of his enfranchiſement under the authority of the text: and what was conſumed during the famine, is abſolutely diſcharged by the work already performed by him; but, on account of the difficulties of that ſeaſon, and the great value of things *then* conſumed, a pair of oxen muſt alſo be given. Such is CHANDE'SWARA's meaning.

BUT MISRA holds, that the ſenſe is this; he is releaſed on giving what he conſumed during the famine, together with a pair of oxen. Conſequently he muſt repay what he uſed during the dearth. By directing payment of what he conſumed, it is not meant, that the value, it then bore, ſhould be made good; but, if it cannot be repaid in kind, it ſhould be paid by an equivalent for the price borne at the time of emancipation.

Is not what he then conſumed, repaid by his labour? The ſage replies; "it is not diſcharged by his labour" (XLIII). It is alſo ſaid in the *Mitácſharà*, in a gloſs on the text of YA'JNYAWALCYA (XLIV), 'one maintained in a famine, and one maintained in conſideration of ſervice, are emancipated on relinquiſhing their maintenance, repaying ſo much as has been conſumed out of the maſter's property from the commencement of *their* ſervitude.' The meaning is this; it is intimated by the text, that property ceaſes on relinquiſhing maintenance, *that is*, food or eatables: but, if one maintained in conſideration of ſervice, do not eat his maſter's food for the ſpace of ſeven or ten days in the month of *Aſwin* (*a ſeaſon of religious abſtinence*)

abſtinence) that is no relinquiſhment of maintenance. Since he has no property in food, which ought not to be eaten, that can be no loſs of maintenance. It therefore appears, that relinquiſhment of maintenance conſiſts in relinquiſhing food to which he has a right.

Since a ſlave has no wealth excluſively his own (LI and LII), is it not impoſſible for him to repay what he has conſumed? Although this objection may be made under the opinion, in which it is contended that ſlaves are incapable of property, yet the ſlave's ownerſhip of wealth given through affection, like that of women over female property, muſt be univerſally acknowledged.

Others hold, that the text of Ya'jnyawalcya (XLIV) does not relate to one maintained in a famine, becauſe the gift of a pair of oxen is not mentioned, but relates to one maintained in conſideration of ſervice: for it accords with a text of Na'reda (XLVIII), and in that text the word "immediately" ſhows his emancipation on the very day, when he deſires his releaſe from ſervitude. (It ſhould not be objected, that the word "immediately," ſignifying that day, denotes his enfranchiſement on the very day, when he relinquiſhes maintenance, *with, or without, demanding his diſcharge.* That word would be ſuperfluous, ſince the ſame ſenſe might be obtained without it: *and it muſt therefore ſignify the day when he claims his releaſe.)* In the preſent inſtance ſome conſideration, ſuch as the gift of a pair of oxen, is required for emancipation from ſervitude. Even though one maintained in a famine were not diſtinguiſhed from one maintained in conſideration of ſervice, ſtill, being diſtinguiſhed from a ſervant for a period depending on agreement, he muſt give a pair of oxen beſides relinquiſhing his maintenance. By the word "relinquiſh" (XLIV) is here meant not accepting it.

Since one maintained in a famine is ſimilar to this ſervant, the expoſition delivered by Chande'swara on the words, "for what was conſumed &c." (XLIII) ſhould be admitted in this caſe. Nor ſhould it be objected, that it appears from the word liquidate in the following text, that both muſt repay what they have conſumed.

XLIV.

XLIV

Yogi-YA'JNYAWALCYA:—HE, who ſaves his maſter's life, *is releaſed from ſervitude, and ſo are ſome ſlaves* on relinquiſhing ſubſiſtence, and *others* on liquidating that *debt, for which they became ſlaves.*

SAVING his maſter's life and payment of debt are diſtinct from the direction for a pair of oxen to be given by one maintained in a famine However, there is no difficulty, *ſay theſe lawyers,* in explaining "liquidate" as ſignifying, that he is emancipated by the gift of a pair of oxen, and by liquidating what he conſumed during the ſeaſon of ſcarcity.

XLV.

NA'REDA:—ONE pledged *is* alſo *releaſed,* when his maſter redeems him by diſcharging the debt, but, if *the creditor* take him in payment *of his demand,* he becomes a purchaſed ſlave.

WHEN the maſter, whoſe ſlave he is, or his *own* father, redeems him, or, when he redeems himſelf, then a ſlave pledged *is* alſo releaſed. But, if he, to whom the ſlave is pledged, take him, he is afterwards a purchaſed ſlave, that is, he remains as one bought So the *Ratnácara.* He becomes a purchaſed ſlave, becauſe he is ſold by his maſter for a price *paid* in *the remiſſion of* the debt and he, who ſells himſelf, is in effect bought Hence theſe two cannot be releaſed from ſlavery, unleſs by the favour of the maſter, or by ſaving his life.

XLVI

NA'REDA:—PAYING the debt with intereſt, a debtor is releaſed from ſervitude, and a ſlave for a fixed period is alſo emancipated by fulfilling the ſtipulated term.

REPAYING, with intereſt, ſo much as had been paid, through his maſter, to a creditor, and for *which he* conſented *to* become a ſlave Hence it appears, according to ſome lawyers, that intereſt muſt be again paid, elſe

cable, if her maſter have no legitimate or adopted ſon; for in that caſe ſhe need not be enfranchiſed. This conſtruction agrees with the *Pracáśa*, *Párijáta* and *Retnácara*; and MISRA holds the ſame opinion.

NA'RLDA declares the form of manumiſſion,

L.

NA'REDA:—LET the benevolent man, who deſires to emancipate his own ſlave, take a veſſel of water from his ſhoulder, and inſtantly break it;

2. Sprinkling his head with water containing rice and flowers, and thrice calling him free, *let the maſter* diſmiſs him with his face towards the eaſt:

3. Thenceforward let him be called "one cheriſhed by his maſter's favour:" his food may be eaten, and his favours accepted; and he is reſpected by worthy men.

"BENEVOLENT;" affectionate, or ſatisfied. It comprehends a perſon emancipating the ſlave who has preſerved his life, or the like; for no other form of manumiſſion has been ordained. Or the manumiſſion of a ſlave, who has preſerved his maſter's life, ſhould be performed by the maſter with affection and benevolence.

"TAKE a veſſel of water from his ſhoulder, and inſtantly break it;" by this is figured the diſcontinuance of his office of carrying water. From the ceſſation of that duty, it appears, under the authority of the text, that all ſervile duties are diſcontinued. The ſprinkling of water with flowers and rice is auſpicious, and is ordained as a part of the ceremony of manumiſſion. "Thrice declaring him free" is intended to confirm his emancipation. Diſmiſſion with his face towards the eaſt is auſpicious, and is ordained, *but* as an *uneſſential* part of the ceremony. Thenceforward he ſhall be called by the appellation of "*freedman or* one cheriſhed by his maſter's favour." The *Retnácara*.

OTHERS

OTHERS ſtate this meaning; his appellation formerly was, "the ſlave of this man;" but now he ſhould be called' "cheriſhed by this man's favour."

"HIS food may be eaten:" it appears from the text, that, if a man of the commercial claſs happen to be the ſlave of a *Cſhatriya*, his food ſhould not be ſhared by other men of the commercial claſs; but after manumiſſion, it may be ſhared by them: and ſo, in other caſes. "And his favours accepted:" it appears, that favours ſhould not be conferred by ſuch a *Vaiſya* before manumiſſion; but now, after manumiſſion, they may be accepted. Some lawyers hold, that his favours could not be received, becauſe he was incapable of property; but now, ſince he may poſſeſs property, being free, his favours may be accepted.

LI.

NA'REDA:—THESE three perſons, a wife, a ſlave, and a ſon, have *in general* no wealth excluſively their own: the wealth, which they may gain, is *regularly* acquired for the man, to whom they belong.

LII.

MENU:—THREE perſons, a wife, a ſon, and a ſlave, are declared by law to have *in general* no wealth excluſively their own: the wealth, which they may earn, is *regularly* acquired for the man, to whom they belong.*

2. A *Bráhmana* may ſeize without heſitation, *if he be diſtreſſed for a ſubſiſtence*, the goods of his *Súdra* ſlave: for, as that ſlave can have no property, his maſter may take his goods.

"EARN;" acquire. The *Retnácara*.

THE ſenſe is, 'doing acts whence property may be obtained.' Such acts are the labours of huſbandry and the like. But CULLU'CABHATTA ſays,

* Already cited in Book II, Chapter IV, v. LVI.

this merely illustrates the dependence of a wife and the rest, in respect of property acquired by themselves; for it will be mentioned, that a wife has exclusive property of six kinds; and a wife being qualified for acts in which property must be used, a woman, with *the* assent of her husband, may even use wealth common to them both.* VIJNYA'NE'SWARA holds the same opinion; and so do JI'MUTA-VA'HANA and others. But it does not appear to be admitted by CHANDE'SWARA, VA'CHESPATI MISRA, and others; for they otherwise explain these, and the texts which will be cited. The mode of reconciling the difficulties suggested by CULLU'CABHATTA will be delivered in its place.

THE sense of the second verse (LII 2), according to CULLU'CABHATTA, is, that a *Bráhmana* master, without hesitation, with confidence, without apprehension of punishment from the king, may take the goods of his slave if he be distressed: the sage subjoins a *lax* complimentary phrase; whatever belongs to his slave, belongs to the master; the slave, though he be the owner of the goods, has not exclusive dominion over them. Therefore, under the authority of the text, the master, though he forcibly seize goods belonging to another *(that is, belonging to his slave)*, shall not be amerced.

BUT according to the opinion, in which it is maintained, that a slave is absolutely incapable of property, "without hesitation" is explained 'with confidence;' in this case, any *Bráhmana* whosoever can only receive from a *Súdra* slave effects ascertained not to belong to his master; but *he must* not *accept* goods which are not *so* ascertained: the sage declares it an offence to accept them without such an ascertainment, "he can have no property &c:" thus, if he receive the goods of a stranger from *the hands of* a different person, the validity of the gift may be questioned.

LIII.

DE'VALA, *cited* in the *Ratnácara* and *Chintámeni*:—AFTER the death of the father, sons may divide his estate; but they have no ownership *or full dominion*, while a faultless father lives.

* Cited again in Lect. V, v. V.

2. MENU has declared, that, like them, women have no dominion over any thing, while their husbands live, nor slaves, while their master survives.

IT appears from the expression, "like them," that the want of dominion of a son, whose father is living, over the paternal estate, of a wife, while her husband survives, and of a slave, during the life of his master, are similar. What is this want of dominion? Since it is intimated by the two conditions (while the husband lives, and while the master exists), that both have *dominion or* ownership after *the* death *of the husband and master*, even at that time dominion, or ownership, subsists, but is in fact a mere entity. In expounding the text of NAREDA (Book II, Chapter IV, v LIII 2), persons not their own masters are explained by authors, 'sons, slaves, and the like.' But want of dominion is an absolute want of independence. Accordingly that term is used instead of the word dependence and slaves and the rest cannot, at that time, give away their own acquired property.

IT should not be argued, that this text relates to wealth acquired by the master of the slave, or by the husband of the wife. The exception could not be pertinent, unless their dominion or ownership might have been supposed, for an exception implies a prior general rule Since the independence of a son might be supposed, because he has ownership of his father's wealth (Book V, Chapter I Section I, Art I), the text is propounded for the purpose of denying that independence Thus some expound the law.

"OVER any thing," since independence in regard to female property will be deduced from particular texts, and from the reason of the law, this dependence regards all things except that The wife's and the slave's want of property abovementioned (LII) is a privation different from that of female property and the like, or it may be understood as dependence in regard to property different therefrom Wives and the rest may accomplish rites, for which money is required, by using female property and the like

LIV

CA'TYA'YANA.—WHATEVER goods belong to a slave, his master

this merely illuſtrates the dependence of a wife and the reſt, in reſpect of property acquired by themſelves; for it will be mentioned, that a wife has excluſive property of ſix kinds; and a wife being qualified for acts in which property muſt be uſed, a woman, with *the* aſſent of her huſband, may even uſe wealth common to them both.* VIJNYA'NE'SWARA holds the ſame opinion; and ſo do JI'MUTA'-VA'HANA and others. But it does not appear to be admitted by CHANDE'SWARA, VA'CHESPATI MISRA, and others; for they otherwiſe explain theſe, and the texts which will be cited. The mode of reconciling the difficulties ſuggeſted by CULLU'CABHATTA will be delivered in its place.

THE ſenſe of the ſecond verſe (LII 2), according to CULLU'CABHATTA, is, that a *Bráhmana* maſter, without heſitation, with confidence, without apprehenſion of puniſhment from the king, may take the goods of his ſlave if he be diſtreſſed: the ſage ſubjoins a *lax* complimentary phraſe; whatever belongs to his ſlave, belongs to the maſter; the ſlave, though he be the owner of the goods, has not excluſive dominion over them. Therefore, under the authority of the text, the maſter, though he forcibly ſeize goods belonging to another *(that is, belonging to his ſlave)*, ſhall not be amerced.

BUT according to the opinion, in which it is maintained, that a ſlave is abſolutely incapable of property, "without heſitation" is explained 'with confidence;' in this caſe, any *Bráhmana* whoſoever can only receive from a *Súdra* ſlave effects aſcertained not to belong to his maſter; but *he muſt* not *accept* goods which are not *ſo* aſcertained: the ſage declares it an offence to accept them without ſuch an aſcertainment, "he can have no property &c:" thus, if he receive the goods of a ſtranger from *the hands of* a different perſon, the validity of the gift may be queſtioned.

LIII.

DE'VALA, *cited* in the *Ratnácara* and *Chintámani*:—AFTER the death of the father, ſons may divide his eſtate; but they have no ownerſhip *or full dominion*, while a faultleſs father lives.

* Colebrooke's Dig. V, v. V.

2. MENU has declared, that, like them, women have no dominion over any thing, while their husbands live; nor slaves, while their master survives.

IT appears from the expression, "like them," that the want of dominion of a son, whose father is living, over the paternal estate, of a wife, while her husband survives, and of a slave, during the life of his master, are similar. What is this want of dominion? Since it is intimated by the two conditions (while the husband lives, and while the master exists), that both have *dominion or* ownership after *the* death *of the husband and master*, even at that time dominion, or ownership, subsists, but is in fact a mere entity. In expounding the text of NA'REDA (Book II, Chapter IV, v. LIII 2), persons not their own masters are explained by authors, 'sons, slaves, and the like.' But want of dominion is an absolute want of independence. Accordingly that term is used instead of the word dependence: and slaves and the *rest* cannot, at that time, give away their own acquired property.

IT should not be argued, that this text relates to wealth acquired by the master of the slave, or by the husband of the wife. The exception could not be pertinent, unless their dominion or ownership might have been supposed; *for an exception implies a prior general rule. Since the independence* of a son might be supposed, because he has ownership of his father's wealth (Book V, Chapter I, Section I, Art I), the text is propounded for the purpose of denying that independence. Thus some expound the law.

"OVER any thing;" since independence in regard to female property will be deduced from particular texts, and from the reason of the law, this dependence regards all things except that. The wife's and the slave's want of property abovementioned (LII) is a privation different from that of female property and the like; or it may be understood as dependence in regard to property different therefrom. Wives and the rest may accomplish rites, for which money is required, by using female property and the like.

LIV.

CA'TYA'YANA:—WHATEVER goods belong to a slave, his master

ter is declared by law to have dominion over them; but that master has no right to the goods, which are acquired by publick sale.

This reading *(pracáśa-vicreyát*, or publick *sale)* occurs in some places of the *Retnácara:* but in the *Chintámeni* the reading is, through favour or by sale *(praśáda vicreyát)*; and this may be well expounded. What is sold, through favour, by the master to the slave; or what is obtained by the slave, from his master, by sale (that is, by purchase), or obtained by him from his master through favour, belongs to the slave, not to his owner. So the *Retnácara.* Misra expounds it: what is obtained by the slave from his master's favour, or by sale from him, belongs to that slave: his master has no right to it. As women are independent in regard to female property, so are slaves also in regard to property acquired by favour. It appears from the literal sense of the text, that slaves are independent in regard to what has been given through favour by the master, or by another person. But Misra and the rest say, by the master's favour.

The *Pracáśa* and *Páryáta* concur in reading *na swámi dhanam arhati*, the master has no right to the goods. Lacshmídhara reads *tat swámi dhanam arhati*, their *master or* owner has a right to the goods. According to that reading, "their owner" is meant of the slave. So the *Retnácara.*

LV.

Cátyáyana:—A free woman, or one, who is not a slave *of the same master (for the word* adási *may bear either sense*)*, becoming the bride of a slave, also becomes a slave *to her husband's owner;* for her husband is her lord, and that lord is subject to a master.

Literally, "not a female slave;" that is, not mancipated to the master of him, whose bride she becomes: for this *interpretation* is necessary from the

* *Misra*] the gloss hardly notices the more obvious interpretation of free woman without a reference to the *Vrihad Cátyáyana*, I should not have discovered, that both interpretations are intended by the commentators, and on this text.

connexion

connexion implied in the word ſlave; and, a maſter of the male ſlave being ſuppoſed, it is proper to interpret the text, not mancipated to him. The expreſſion "ſhe becomes a ſlave," alſo implies the ſame connexion. In this expoſition, the *Vivâda Retnácara* and *Vivâda Chintámeni* concur: and the female ſlave of another, or a free woman not the ſlave of any man, becoming the bride of a mancipated ſervant, is enſlaved to his maſter. In that caſe the female ſlave of another becomes enſlaved to the maſter of the male ſlave, with the aſſent of her former maſter.

"NOT a female ſlave:" if the negation ſhow one different from a female ſlave generally *(that is, a free woman)*, and if it be ſaid, that ſhe, who is the ſlave of any other perſon, is not different from a female ſlave generally, *(that is, ſhe is not a free woman,)* ſtill there may be a general difference from ſlavery, becauſe ſhe is releaſed from ſervitude by *her maſter's* conſent *to her marriage*. In effect there is no difference *between theſe expoſitions*. Such is the opinion intimated in the *Retnácara*.

BUT MISRA writes, that her marriage is in fact a cauſe of emancipation from ſervitude to her former maſter. Hence this text belongs to that title (*the title of emancipation*); and proves the *ſecond* ſervitude to be formed with the conſent of her maſter. In the caſe of her marriage without his conſent, as in the marriage of a *chéticá* or female attendant, the former maſter's property is not loſt.

ARTICLE II.

ON PERSONS LIABLE TO SLAVERY.

LVI.

NA'REDA:—In the inverſe order of the claſſes ſlavery is not legal, excepting *the caſe of* one, who forſakes his duty: *in this reſpect* the condition of a ſlave is held ſimilar to *that of* a wife.

"In the inverſe order;" thus a *Vaiſya* cannot be the ſlave of a *Súdra*; nor a *Cſhatriya*, of a *Vaiſya*; and ſo forth. An illuſtration is given; "ſimilar to *the condition of* a wife:" as a woman of the commercial claſs cannot be the wife of a *Súdra*, nor a woman of the military claſs be the wife of a *Vaiſya*; ſo in this caſe alſo. "Excepting one, who forſakes his duty;" by this it is expreſſed, that one, who forſakes the duty of his own order, may become a ſlave even in the inverſe gradation of claſſes. Such is the opinion of MISRA and CHANDE'SWARA. Conſequently an apoſtate *Vaiſya*, may voluntarily become the ſlave of a *Súdra*, and ſo forth; but, if he do not agree to become the ſlave of any perſon in particular, the king ſhall make him his own ſlave, as already mentioned.

ON this point an obſervation ſhould be made: the ſervitude of him alone, who forſakes the *profeſſed* duty of his "order," is expreſsly allowed in the inverſe gradation of claſſes; is the ſervitude even of others, than a *Bráhmana*, who forſake the duty of their "claſs," illegal in the inverſe gradation? for how can the expreſſion, "except one, who forſakes his duty," bear both ſenſes.

LVII.

CA'TYA'YANA:—BHRIGU admits the ſervitude of one, who, being his own maſter, gives himſelf, as *the marriage of* a wife *ſelf-given is acknowledged:* ſlavery ſhould be limited to three claſſes; never *can* a *Bráhmana become a ſlave.*

2. *The*

2. *The ſervitude* of men of the military, commercial, and ſervile claſſes, who have forfeited their independence, may be in the direct, not in the inverſe, order of the claſſes.

3. But even a man of equal claſs muſt not reduce a *Bráhmana* to ſlavery; yet a mild and learned man may employ in labour one inferiour to himſelf in thoſe qualities.

4. Still let not the higheſt twice-born man perform impure work; for the glory of a king is obliterated by the ſlavery of a *Bráhmana*.

5. The law permits the ſervitude of men of the military, commercial, and ſervile claſſes, to one of an equal claſs, on ſome accounts; but on no account let a man compel a *Bráhmana* to perform ſervile acts.

"Never a *Bráhmana*" (LVII 1): the ſlavery of a *Bráhmana* is univerſally forbidden: "as *in the caſe* of a wife." He elucidates the precept: "in the direct order of the claſſes, &c." Men of the military and other tribes, accidentally forfeiting their freedom and independence, *may become ſlaves* in the direct order of the claſſes. This conſtruction *is ſuggeſted* by preceding terms. Though the ſervitude of a *Bráhmana* be univerſally prohibited, he repeats the prohibition for the ſake of particular explanation; "but even a man of equal claſs &c." Or the ſervitude of other claſſes, in the direct order, is declared; as there is no claſs ſuperiour to a *Bráhmana*, his ſervitude to a man of an equal claſs might be ſuppoſed: the ſage obviates that doubt. "But even a man of equal claſs &c." (LVII 3); by this it is implied, that the ſervitude of *Cſhatrijas* and the reſt, to men of equal claſs, is permitted. He ſubjoins a particular rule in reſpect of a *Bráhmana*: "a mild and learned man &c.;" ſuch a man, reducing to ſervitude a *Bráhmana* inferiour in reſpect of virtue and learning, may not compel him to perform impure work, ſuch as removing urine or ordure; but he may employ him in pure work, ſuch as ſweeping a temple or the like. But the king ſhould never reduce a *Bráhmana* to ſlavery: the

the ſage therefore ſays, the king's glory would be obliterated. Or the expreſſion is general; his glory would be loſt, even if a *Bráhmana* be enſlaved by others. This intimates diſgrace. Hence the ſervitude even of a willing *Bráhmana* ſhould not be permitted; for *the king* himſelf would ſuffer thereby.

By forbidding the ſervitude of a *Bráhmana*, no objection is implied to his ſerving as an agent, in collecting the revenue of a village or the like. It ſhould not be ſaid, that even the office of an agent, being ſervice, is forbidden, becauſe MENU ordains, "never let him (*a* Bráhmana) ſubſiſt by *Swavrítti*;"* and he himſelf explains it, "Service is named *Swavrítti*, or *dogliving*, and of courſe he (*a* Bráhmana) muſt by all means avoid it;"† which is expounded by the learned, ſervice or acts producing gratification only, *not religious merit*. From the declaration contained in the following text, that a *prieſt, becoming the* king's ſervant, is not a true *Bráhmana*, (or, which is the ſame thing, that the prieſt offends,) no fault on the part of his maſter is eſtabliſhed.

SA'TA'TAPA:—THOSE untrue *Bráhmanas* are declared by holy ſages, acquainted with the principles of things, to be *of* ſix *ſorts*: the firſt of them is a ſervant of the king; the ſecond, a buyer and ſeller.

SOME hold, that a *Bráhmana*, may, with his own conſent, be employed as a commiſſioned ſervant; but not, without his conſent: for the appropriate fine would be thereby incurred.

"THE law permits &c." (LV 5): equal claſs there comprehends equal qualities. Thus a *Cſhatriya*, a *Vaiſya* and a *Súdra* may be employed as ſlaves by men of equal claſs, even though theſe be only equal in virtue: ſuch is the law in reſpect of thoſe claſſes. But a *Bráhmana* can never be the ſlave of one *merely* equal in virtue.

The *Párijáta* and HELA'YUDHA.

* MENU, Ch. IV, v. 4. † Ibid v. 6.

A *Bráhmana*, who follows the duties of the military, commercial, or ſervile claſs, bearing arms, practiſing huſbandry, commerce and the like, or performing ſervice, can never employ a *Bráhmana* in a ſervile duty.

LACSHMI'DHERA.

BUT CHANDE'SWARA aſſents to both conſtructions.

"THEIR ſeveral duties" (XXXVII 1) are explained in the *Retnácara*, the duties ordained for the military and commercial claſſes. They are maintained in conſideration of ſuch work. But, if a *Bráhmana* cauſe them to perform ſervile acts, the ſame legiſlator declares *a penalty* (XXXVII 2). A *Bráhmana*, who, by his power, ſhall cauſe twice-born men, girt with the ſacrificial thread, (or virtuous and learned,) to perform ſervile acts without their conſent, ſhall be fined by the king ſix hundred *panas*. This is the ſenſe according to the *Retnácara*. By "twice-born men" are meant the *Bráhmana*, *Cſhatriya*, and *Vaiſya*. But, with their conſent, there is no objection to the performance of ſervile acts by men of the military and commercial claſſes.

BUT a man of the ſervile claſs, whether bought or unbought, he may compel to perform ſervile duty (XXXIII): whether bought or unbought, he may compel him to perform impure work.

The *Retnácara*.

LVIII.

VISHNU:—HE, who employs a man of the moſt elevated claſs in ſervile duty, ſhall be fined in the higheſt amercement.

"A MAN of the moſt elevated claſs" is explained in the *Chintámeni*, a man of the ſacerdotal tribe. Others think there is no difficulty in aſſigning ſuch a puniſhment to the man, who employs in ſervile duty, one of a higher claſs, than his own.

IN the caſe of one, who is not his own maſter, dominion and ſervitude occur in the inverſe order of the claſſes; *as* in the ſtory of HERIS'CHANDRE,

recorded in the *Márcandéya-purána*: accordingly the term, "his own master," is used by CA'TYA'YANA and others, when prohibiting servitude in the inverse order of the classes.

CHANDESWARA.

IT should be considered, that the expression, "his own master," is thus used in the text of CA'TYA'YANA (LVII), "one, who, being his own master, gives himself." The servitude of one, who is not his own master, in the inverse order of the classes, may be thus understood, when a *Cshatriya* delivers his own *Vaisya* slave to be the mancipated servant of a *Sudra*; then *one, who is not his own master, becomes a slave in the inverse order of the classes.*

LIX.

CA'TYA'YANA:—HE, who seizes a woman of the sacerdotal class, he, who sells her, and he, who enslaves a woman of family impelled by lust,

2. Or causes her to be approached by another, shall be amerced; and that *enslavement* is null.

THERE is a slight difference in the reading according to the *Retnácara* and *Chintamani*.* "Impelled by lust" is explained in the *Retnácara*, with her own consent through desire. Both authors explain the text, "he, who enslaves a woman of family voluntarily offering herself, or who delivers her to another, shall be fined." Authors have not exhibited the *other* interpretation, "he, who enslaves a woman of family impelled by lust, (*that is*, unable to resist the impulse of desire, and *therefore* yielding her person,) shall be fined." Nor is it noticed, that this is inconsistent with APARA'RKA'S interpretation of a woman of family, 'a woman, who preserves *the honour of* her family.'

"AND that is null" (LIX 2). that enslavement is null and void. Thus it is incidentally mentioned, that she is of course released from slavery.

* In one MS. the text is read *Chintáyam cha*, in two others, *Chintáyam ca*. The variation does not affect the sense.

LX.

LX.

CA'TYA'YANA:—THE man, who treats as a ſlave the nurſe of an infant child, or a free woman, or the wife of his dependant, incurs the firſt amercement.

2. AND he, who attempts to ſell an obedient female ſlave, though ſhe reſiſt the ſale, and though he be not diſtreſſed but able to ſubſiſt, ſhall pay a fine of two hundred *panas*.

"THE nurſe of an infant child," who nouriſhes that infant at her breaſt. "A free woman," intruſted to him, or who has become a ſervant for maintenance. "His dependant;" his ſervant. "Though ſhe reſiſt;" though ſhe ſay, "I ought not to be ſold."

The *Retnácara*.

IT appears, that the nurſe of an infant, though ſhe be a ſlave, ſhould not be ſo treated: for "free woman," *ſubſequently mentioned*, denotes an independent woman. VA'CHESPATI MISRA clearly explains it: "the nurſe of an infant," though ſhe be a ſlave; that is, one who gives her breaſt to an infant: "a free woman;" one, who ſerves for ſubſiſtence and the like: if they do not conſent to be ſold, the *ſeller incurs* the firſt amercement, or a fine of two hundred and fifty *panas*.

"AN obedient female ſlave" (LX 2); from this it appears, that there is no objection to the ſale of one whoſe conduct is vicious. It alſo appears from the term, "though he be not diſtreſſed," that there is no objection to the ſale, if he be diſtreſſed for ſubſiſtence; and from the expreſſion, "able to ſubſiſt," that there is no objection to the ſale, if he be unable to ſubſiſt otherwiſe, though the ſeaſon be not calamitous.

SECTION

SECTION III.

ON WAGES AND HIRE.

LXI

NA'REDA:—THE rule and the act of payment, and nonpayment, of the wages or hire of ſervants are *now* declared; called in law nonpayment of wages *or* hire.

THE title of law, called breach of promiſed obedience, has been already propounded, that, which is called nonpayment of wages or hire, is now delivered. Conſidering breach of promiſed obedience as a branch of nonpayment of wages, MENU has not ſeparately propounded it, or breach of promiſed obedience falls under the miſcellaneous or ſupplementary title.

THE rule and act of payment and nonpayment both *conſtitute the title of* nonpayment of wages or hire The rule of payment, ("wages or hire ſhould be paid,") and the act of payment the rule of nonpayment, ("wages or hire ſhould not be paid,") and the act of withholding payment *theſe* are *comprehended in* nonpayment of wages or hire

VIJNYA'NE'SWARA reads, "the conſecutive rule of payment and nonpayment of wages to ſervants is declared," and he expounds it, the conſecutive rule of payment, and conſecutive rule of nonpayment, will be delivered in the following verſes, under *the title of* nonpayment of wages or hire

LXII

NA'REDA.—LET the maſter, for whom work is performed, pay wages to the ſervant, according to their agreement, at the beginning, the middle, or end of his labours, as may be ſettled between them:

2. Wages

2. Wages not being ſtipulated, let the factor, the herdſman, and the ſervant in huſbandry, *reſpectively*, receive a tenth part of the profit on goods ſold, of the milk, and of the grain.

" The maſter, for whom work is performed ;" *literally* the maſter of the work. According to their agreement; as was ſtipulated. At the beginning, the middle, or end of the labour.

The *Retnácara.*

Consequently the meaning is, at the beginning, the middle, or end of the labour, as was ſettled between them; the wages ſhall be paid at the period agreed on. But, if none were ſettled, any one of thoſe periods may be the term of payment: and, if the wages be not paid even at the third period, application ſhould be made to the king.

Others hold, that payment ſhould be made by him, who ſhares *the produce of labour*, at the beginning, the middle, or the end of it. According to their opinion, it is intimated, that, if payment be not made, at thoſe periods reſpectively, by them who ſhare the produce of labour, recourſe to the king is allowed, and ſo forth.

Successively, five parts at the commencement, ſeven at the middle, and twenty-eight at the end of the labour.

The *Párijáta.*

According to this opinion, dividing the whole of the wages agreed for, into forty parts, he ſhould pay five at the commencement of the labour, and ſo forth. Whence the author has deduced a diviſion into forty parts, and the ſucceſſive payment of five parts &c. ſhould be inquired. At preſent, an agreement for paying wages at the end of the month is very cuſtomary.

" Milk," *literally* the ſeed of cows (LXII 2); *meaning* the beſt produce of kine, *which is* milk.

The *Retnácara.*

LXIII.

YA'JNYAWALCYA: — HE, who cauſes work to be performed without fixing the wages, ſhall be compelled by the king to give a tenth part of the *profit ariſing from* commerce, cattle, or grain.

THE maſter, who cauſes work to be performed in commerce, attendance on cattle, or agriculture, without fixing the wages of his ſervant, ſhall be compelled by the king to pay him a tenth part of the profit *ariſing* therefrom.

The *Retnácara.*

VIJNYA'NE'SWARA *gives* the ſame *expoſition.*

LXIV.

YA'JNYAWALCYA:—THE will of the maſter *determines the wages* of him, who tranſgreſſes time and place, and of him, who does the work otherwiſe *than was ſtipulated:* but more ſhall be paid, if more be done.

A SERVANT, who works at a different time and place from that which is proper, or otherwiſe than was agreed, by doing leſs or the like, receives wages at the will and pleaſure of his maſter: but if he do more work on his maſter's requiſition, he receives greater wages.

The *Retnacara.*

THE ſecond verſe is cited by VIJNYA'NE'SWARA, with this obſervation; "the ſage ſpeaks of one, who does not act according to *his maſter's* orders." VIJNYA'NE'SWARA's meaning is this: though he ſee a proper time and place for the ſale of the commodity, if *the factor*, through inſolence or the like, do not ſell it; or if he accept leſs profit, thinking that time and place would cauſe him much trouble; let the maſter pay him what wages he pleaſes, not the full hire. Again; if he obtain greater profit by his own ſelection of time and place, a greater reward, than was previouſly ſtipulated, ſhall be given by the maſter to the ſervant

WHEN

When greater profit is obtained by his own ſelection of time and place (that is, by his own exertion), then only a greater reward ſhall be given; not if the greater profit were cauſed by *circumſtances of* time and place, *without any exertion on his part.* For, were it ſo, leſs wages being paid to one who obtained leſs profit, and greater wages to one who obtained ample profit, the *direction for* receiving the full hire would be abſurd: and the maſter is entitled to the greater profit obtained on his goods at the proper ſeaſon.

Others explain time and place in this manner: a ſervant receives wages determined by the will of his maſter, if he deviate from the time or place thus preſcribed; "build a wall in the month of *Cárttic*;" or, "conſtruct a boat on the ſhore of the Ganges."

LXV.

Ya'jnyawalcya:—According to the work performed by a ſervant, though the whole taſk impoſed might be too much for both *maſter and ſervant together*, muſt wages be given; if either of them could have performed it, *and it be performed*, let the promiſed reward be paid.

This text is intended for a rule in the caſe of a ſervaot, whoſe work and hire are thus ſtipulated; "ten pieces of money ſhall be received for building this wall." By the expreſſion, "even by both," is alſo implied "by "many:" if it could not be performed by any one; *or* if the work be not completed by reaſon of ſickneſs or the like; then wages muſt be given in proportion to the work done, as determined by arbitrators; in proportion to the work, which each ſervant has performed, let the maſter pay him wages. Neither ſhall the ten pieces of money be paid, as had been promiſed; nor ſhall payment be withheld for the work partially done. If the work can be performed; if it be performed by both, or by many ſervants, the promiſed or ſtipulated recompenſe ſhall be paid, and divided amongſt them. Neither ſhall the whole reward promiſed be paid to each; nor ſhall each be paid in proportion to his work. Such is the opinion of Vijnya'neſwara.

Here 'wages in proportion to his work' do not ſignify in proportion to the

the part of the work *done* and to the *whole* wages; but a recompence to be paid according to the number of days: for VIJNYA'NE'SWARA, in the latter part *of his gloſs*, means daily hire, by the term 'in proportion to work.'

THOUGH the whole taſk (which could only be performed by many perſons) could not be accompliſhed by both *maſter and ſervant together*, wages muſt be given in proportion to the work done; but, if it could have been performed by both maſter or ſervant together, or by either of them, in that caſe the fine preſcribed muſt be paid. Such is the ſenſe of the text; and that *fine* will be declared in its place.

The *Retnácara.*

THE meaning of the gloſs is, if one or two perſons erroneouſly undertake to perform, on ſtipulated wages, a taſk which could *only* be performed by many, the ſervant ſhall certainly receive the proper hire of his labour, though the work be not completed. But, if it could have been accompliſhed by the maſter or ſervant, then, ſhould it remain unperformed in conſequence of neglect or the like, the ſervant ſhall pay the fine preſcribed.

BOTH interpretations *may* be admitted. In the *Páryáta, the text is expounded,* "if the taſk require the labour of both *maſter and ſervant*, the "ſervant ſhall receive wages in proportion to the work performed by him; "if the taſk could be performed *by the ſervant alone*, and it be performed, "let the promiſed reward be paid." This interpretation of both parts *of the text* is omitted by the other two commentators.

LXVI.

VRĬHASPATI:—LET the man, who guides the ploughſhare, have a third or a fifth part *of the grain, if no ſpecial agreement be made.*

THE diſjunctive "or" ſeparates two caſes declared in the following text.

LXVII.

VRĬHASPATI:—LET *the ploughman*, to whom food and veſture

ture are given, take a fifth, and let him, who is supported by the profit *alone*, receive a third part of the grain produced.

"SUPPORTED by profit," by the fruit of labour, by the grain produced and the like: meaning him, who has no such allowance of food and vesture.

A TENTH part, as directed by NA'REDA (LXII 2), is assigned to a servant different from the ploughman.

THE *Retnácara*,

IN this exposition, the *Chintámeni* concurs. The meaning is this; the hire mentioned is allowed to a servant employed in cutting grass preparatory to tillage. Or the text of NA'REDA may relate to pulse and the like, which require sowing and watching only, *not tillage*.

LXVIII.

'APASTAMBA:—A SERVANT in tillage, who abandons *his* work, shall be beaten with a staff: so shall a herdsman, *who neglects his duty*, and his own cattle shall be seized.

A SERVANT in tillage, or ploughman, who abandons *his* work *or absconds*, shall be beaten with a staff. So shall a *negligent* herdsman, and moreover the herdsman's cattle shall be seized.

The *Chintámeni* and *Retnácara*.

LXIX.

Vriddha MENU:—*The* wages *of seamen* shall be such, as are *usually* given by men, who understand sea voyages, and who know countries, and seasons, and commodities; unless there be a special agreement.

"MEN, who understand sea voyages," meaning generally persons well acquainted with commercial affairs.

The *Retnácara*.

THE *Chintámeni* in fact gives a similar exposition. It is consequently the author's opinion, as some lawyers remark, that this, with the tenth part *of the profit* directed by NA'REDA and YA'JNYAWALCYA (LXII 2 and LXIII), constitutes an alternative.

BUT others hold, that this text concerns the wages of seamen because it mentions sea voyages. In other cases, the wages shall be a tenth part of the profit; but the wages of seamen shall be the same which are *usually* given, by merchants trafficking by sea, to their servants; or if the wages, have been previously settled, they shall be paid *accordingly*. By the restriction of "men, who know countries, seasons and commodities," it is implied, that wages determined by any person, whose intellect is disturbed, shall not be paid.

LXX.

NA'REDA:—THE implements *of work*, and whatever is intrusted *to servants* for their master's business, should be diligently preserved; not wickedly *neglected* by any means.

"IMPLEMENTS of work" (the tie of the yoke and other implements of husbandry), and "what is committed *to servants* for their master's business" (such as grain and the like for agriculture) should be diligently kept by the servants, not wickedly or knavishly *neglected*.

The *Retnácara*.

"AGRICULTURE," in this gloss, signifies 'husbandry and the like:' for NA'REDA has premised the factor, the herdsman, and the servant in husbandry (LXII 2).

"THE implements of work:" the tie of the yoke and the like, which are necessary or useful in work, and which are intrusted *to the servants* for the business proposed (be it agriculture or any other occupation), must be diligently kept by the servants. If they be destroyed even by the act of GOD, *but* in consequence of the servant's neglect, it is a fault on the part of that servant. This induction seems just.

LXXI.

LXXI.

VRIHASPATI:—IF the ſervant do *not perform any part* of his maſter's buſineſs, he forfeits his wages; and may afterwards be ſued *for a fine:*

2. And, if a ſervant, having received his wages, perform not his work, though able to do it, he ſhall pay twice the amount as a fine *to the king;* and *the full amount of* thoſe wages *to his maſter.*

IF a ſervant able to perform his taſk, having undertaken to execute work required by his maſter, do not perform any part of it (that is, not the ſmalleſt part of it); in that caſe he forfeits his wages. He loſes the amount of the wages verbally promiſed. Does it mean, "he ſhall pay that amount;" ſince this correſponds with the text of YA'JNYAWALCYA (LXXII)? No; for that is ſignified by the expreſſion, "and may afterwards be ſued;" *literally* a conteſt ſubſiſts. By "conteſt" is meant a lawſuit: and by ſaying, that a lawſuit afterwards ſubſiſts, a fine is intimated; and that fine ſhould be deduced from the text of YA'JNYAWALCYA (LXXII).

"AND if a ſervant &c." (LXXI 2): ſince he has actually received wages, he ſhall pay twice the amount as a fine to the king; and their full amount to his maſter.

LXXII.

YA'JNYAWALCYA:—A SERVANT, who deſiſts from working after he has received his wages, ſhall pay twice their amount; and their full amount *only*, if he have not received them: the implements of huſbandry muſt be diligently kept by the ſervants.

HE ſhall pay twice the amount of thoſe wages, *in the firſt caſe;* and their full amount, (not more than was agreed; not twice their amount;) *in the ſecond*. Therefore twice the amount *of the wages* ſhall be paid by him, who

who begins the work, and then deſiſts from it after receiving his wages; and the full amount *only*, if he have not received them.

"THE implements of huſbandry" *namely* the ſpade, the ploughſhare, or the like, muſt be diligently kept or preſerved by the ſervants; that is, by the ploughmen and the reſt.

The *Retnácara.*

THE payment of the full amount, or of twice the amount of his wages, ſhould be underſtood as a fine to the king. "The implements muſt be diligently kept," as alſo directed by NA'REDA (LXX); this ſhould be underſtood of a ſervant employed in labour.

VIJNYA'NE'S'WARA, after ſtating this expoſition, propoſes another conſtruction of the laſt hemiſtich, in this manner; "or he ſhall be forcibly compelled to perform his work, after paying him the wages promiſed," as directed by the following text of NA'REDA.

LXXIII.

NA'REDA:—A SERVANT, who refuſes to perform the work he has undertaken, ſhall be compelled to fulfil his agreement, firſt paying him his wages; but, if he perſiſt in his refuſal after receiving his wages, he ſhall forfeit twice their amount.

LXXIV.

CA'TYA'YANA:—HE who begins, but does not perform, his taſk, ſhall by force be compelled to finiſh it; if he refuſe to do ſo, he incurs an amercement.

LXXV.

VRIHASPATI:—HE, who has promiſed to perform work and does it not, ſhall be compelled even by forcible means; and if he *ſtill* refuſe to complete it, he ſhall be fined *two* hundred *panas* of copper.

THE

THIS promiſe, *or agreement*, from the correſpondence of the text of CA'TYA'YANA (LXXIV), extends to the commencement of the work.

The *Retnácara*.

THE texts muſt be diſtributed to different caſes, for the purpoſe of reconciling the *ſeeming* contradiction between this fine of two hundred *panas*, and the fine of eight *criſhnalas* or *raticás*, directed in a text which will be quoted from MENU (LXXVI): and their inconſiſtency with the text of YA'JNYAWALCYA, which directs a fine equal to the amount of the wages (LXXII), muſt alſo be explained.

FOR this purpoſe, ſome hold, that, if a man, not having received his wages, go elſewhere through avarice, he ſhall be fined their full amount; if, through indolence, he do not perform the work, two hundred *panas*; but, if he do not begin the work, eight *criſhnalas* or *raticás*. Others think, he ſhall be made to pay the full amount, in the caſe of wages *ſettled* by contract; and the fine is two hundred *panas* and the like, in the caſe of wages by the month or the like. Others again affirm, that twice the amount of the hire is paid to the maſter, and two hundred *panas* to the king: and in like manner, the full amount of the wages, twice their amount, the ſeventh part and ſo forth (LXXXVII) are payable to the maſter; and the two hundred *panas* and other fines, to the king.

IF it be ſaid, that in a text above quoted (LXXI) a forfeiture of wages is ordained, which is inconſiſtent with the direction for compelling the ſervant *to perform the work* (LXXV); it is reconciled from the rule propounded by CA'TYA'YANA (LXXIV): paying his wages, he may by force compel him; but if he *ſtill* refuſe to perform it, he incurs the forfeiture of his wages, and an amercement.

LXXVI.

MENU: — THAT hired ſervant or workman, who, not from any diſorder but from inſolence, fails to perform his work according to his agreement, ſhall be fined eight *criſhnalas* or *raticás* of gold, and his wages or hire ſhall not be paid.

" NOT from any diſorder ;" not from the act of GOD or of the king, by which he might be diſabled from performing it.

The *Retnacara.*

LXXVII.

MENU explains *crĭſhnala :*—THE very ſmall mote, which may be diſcerned in a ſunbeam paſſing through a lattice, is the leaſt viſible quantity, and men call it a *traſarénu :*

2. Eight of thoſe *traſarénus* are ſuppoſed equal in weight to one minute poppy ſeed ; three of thoſe ſeeds are equal to one black muſtard ſeed ; and three of thoſe laſt, to a white muſtard ſeed :

3. Six white muſtard ſeeds are equal to a middle ſized barley corn ; three ſuch barley corns to one *crĭſhnala ;* five *crĭſhnalas,* or *raćtićás,* of gold, are one *máſha,* and ſixteen ſuch *máſhas,* one *ſuverna.*

THE whole meaning is, that a *crĭſhnala* is a quantity of gold weighing one *raćtićá,* or ſeed of the *gunjá.**

CULLU'CABHATTA ſays, ſervants ſhall be fined eight *crĭſhnalas* or *raćtićás* of gold, and the like, according to the work. By the term " and the like" muſt be underſtood *raćtićás* of ſilver, copper, or other *metals.* He thinks the denominations, as far as *crĭſhnala,* are common to all metals, and the name of *ſuverna* only, peculiar to gold.

THE ſame legiſlator declares the rule, when a ſervant, from diſeaſe, not from inſolence, fails in performing the work.

LXXVIII.

MENU :—YET, whether he be ſick or well, if the work ſtipulated be not performed *by himſelf, or by another for him,* his

* Decem ad hunc ſit.

whole

whole wages are forfeited, though the work want but a little of being complete.

If he do not perform it himself, or by means of another. "Though it want but a little;" though a trifle only be unfinished.

The *Retnácara.*

Having abandoned *his* work on account of ſickneſs, if he do not complete it when recovered, no wages ſhall be paid for the work performed, although a trifle only remain *to be done.*

Cullu'cabhatta.

Here, and in the text of Na'reda (LXXIX), the whole wages are mentioned.

LXXIX.

Na'reda:—He who *is hired for a time,* and leaves his work before the expiration of the full term, ſhall forfeit all his wages: *but,* if he deſiſt by the fault of his maſter, he ſhall receive as much as was ſtipulated.

Therefore, if he leave the work by his own fault, no wages whatever ſhall be paid; but if he deſiſt by the fault of his maſter, before the full time has elapſed, he ſhall receive ſo much wages as were ſtipulated.

The *Retnácara.*

Others ſay, the text of Menu (LXXVIII) concerns wages ſettled by contract; thus, if wages be ſtipulated according to the work, without any time ſpecified, and if the work be not performed in conſequence of diſeaſe or the like, even though it want but little of being complete, the ſervant ſhall not receive the wages ſtipulated. But the text of Na'reda (LXXIX), *they think,* relates to one not prevented by diſeaſe. However, that has not been ſtated by reſpected authors.

LXXX.

VISHNU:—A SERVANT or *workman by time*, who leaves the work before the expiration of the full term, shall forfeit his whole price of his labour, and pay one hundred *panas* to the king. Whatever may be injured by his fault, he shall make good to his master; unless the injury happen by the act of GOD or of the king. If the master dismiss the servant, before the full time has passed, he shall pay him his whole wages, and a hundred *panas* to the king, unless the servant were in fault.

CHANDE'S'WARA explains wages or hire *(the literal sense of* bhr'ti), hire to be earned by work; a servant, who leaves that *(meaning one, who leaves his work)*, unless by the fault of his master, shall forfeit the price of his labour. Thus a servant, leaving the wages which were paid him, leaving a part of them *unearned* by comparison with the quantity of work performed, shall forfeit his whole wages; and pay a fine of one hundred *panas* to the king. In the *Chintámeni* the text is read, "a servant, who leaves his work *(carma)* "before the expiration of the full term." The sense is obvious.

LXXXI.

MENU:—BUT, if he be really ill, and, when restored to health, shall perform his work according to his original bargain, he shall receive his pay even after a very long time.

BUT he, who, leaving his work on account of sickness, performs the stipulated task when he recovers health, shall receive his hire even after a very long time. So the *Retnácara*, with which CULLU'CABHATTA concurs.

IF he quit his work when ill; but, when restored to health, perform it even after a long time, he shall receive his pay. Thus the *Chintámeni*, with which the *Mitácsh'ará* coincides.

As

As for the expoſition, that a ſervant, who quits his work from indiſpoſition, and performs it after his recovery, ſhall receive his pay for the period of his indiſpoſition, even though it be a very long time, that would be wrong: for pay cannot be due without work performed; and it is inconſiſtent with *the commentaries of* many authors.

LXXXII.

NA'REDA:—If a load be damaged by the carrier's fault, whatever is loſt, he ſhall be compelled to make good, unleſs the injury happen by the act of GOD or of the king.

"A LOAD;" a thing on which the hired ſervant is employed. "Damaged;" *literally* broken. "By the carrier's fault;" by the fault of the hired ſervant.

The *Retnácara.*

CONSEQUENTLY this text does not concern a carrier alone, but any hired ſervant. It ſhould be conſidered, that, ſince the term "carrier" muſt neceſſarily have a general ſenſe, it may relate to every ſort of ſervant or labourer.

LXXXIII.

Vrĭddha MENU:—A SERVANT ſhall pay the full value of what he has loſt by mere inattention; twice the value of what he has loſt by groſs negligence, or malice; but he ſhall not be forced to pay any thing for what robbers have ſeized, for what has been burned, or for what an inundation has carried away, *unleſs he were himſelf blamable.*

THE text is merely an inſtance given. Thus, if the loſs happen by the ſervant's fault, but unintentionally, he ſhall be compelled to pay the full value; if it happen by his fault and intentionally, twice the value: but for a caſual loſs without any fault on his part, he ſhall not be forced to pay any thing. This virtually is the meaning.

The *Retnácara* and *Chintámeni.*

LXXXIV.

VRĬHASPATI:—IF a ſervant, by the command of his maſter, and for his benefit only, do an improper act, the offence ſhall be imputed to the maſter.

" FOR his benefit *only*;" for the benefit of the maſter *alone*. " An improper act," ſuch as theft or the like. " The offence ſhall be imputed to the maſter," not to the ſervant.

The *Retnacara.*

IT appears from the condition, " by the command of his maſter," that, if he perpetrate a crime not commanded by his maſter, even though he intend his benefit only, the blame is not imputed to the maſter. But if it be argued, as proper to affirm, that the maſter does not partake of the guilt, when a ſervant, even by his maſter's command, does an improper act for no advantage, or for his own benefit only, *the anſwer is*, when a maſter commands a ſervant to commit a robbery or the like, for no advantage to himſelf, ſtill he derives benefit *from the act* by *ſome* gratification *it affords him*; and if he authorize it for the ſervant's benefit, he derives *ſome* advantage by the ſaving of wages, or the like. But, if the ſervant aſk, " may I ſteal that man's goods," and the maſter reply, " ſteal them," reflecting, " he is poor, what motive have I for oppoſing his wiſh?" in that caſe the maſter, though he authorize the theft, does not partake of the guilt.* For this purpoſe, the ſage has ſaid, " for his benefit only."

LXXXV.

YA'JNYAWALCYA:—A CARRIER ſhall be forced to make good a load *damaged or* loſt *by his own fault*, not by the act of GOD or the king: and if he diſappoint the purpoſe, *for which he is employed*, he ſhall be compelled to pay twice the amount of his wages.

" NOT by the act of GOD or the king," this denotes a fault on the part of the ſervant. The *Retnacara.*

* If ſo ſtrict lawyer will ever be guided by this ſtrained interpretation. T.

A LOAD,

A LOAD, to which no accident happens by the act of GOD or of the king, is so described. If that be lost by a carrier, through inattention, he shall be forced to make good the amount of the loss, which is incurred on that load.

AGAIN; he, who previously undertook a task, requisite for the purposes of a master busied in preparations for nuptials, when the auspicious day is near, but afterwards disappoints the purpose by refusing *to perform the work*, shall be compelled to pay twice the amount of his wages. The *Mitácsharà*.

HERE "purpose" is employed in a general sense: twice the amount of the wages must be paid for the mere disappointment of any business previously undertaken; but if the business cannot fail, the penalty is the full amount of the wages *only*. So others, who follow the *Mitácsharà*. But the author of the *Retnácara* says, the word "carrier" should be brought forward; "a carrier, having received his hire, and not departing at the time when the business should be done &c." In effect there is no difference. Thus the amercement for him, who abandons his work, has been already declared; the penalty, in the case of failure of the business in consequence of his not performing his task, is now propounded: loss is here the subject. Such is the meaning of both *commentators*. This penalty may be incurred, if the business might be greatly injured; for the servant does not disappoint it, if it be accidentally accomplished. The following text makes this evident.

LXXXVI.

Vriddha MENU:—HE, who does not perform his task at the full time *agreed on*, and disappoints the business, shall be forced to pay twice the amount of his wages; and another shall be employed in his stead.

LXXXVII.

YA'JNYAWALCYA:—ONE, who declines *the work* when yet distant, *shall be compelled to pay* the seventh part of the wages; or the fourth part, if *he decline it* on the way; but he, who quits it half way, shall be forced to give the full amount of the wages.

"WHEN

"When *yet* distant," "on the way," and "half way," are explained by the circumstances of another servant being found with ease, with difficulty, or with greater difficulty.

In these instances, according to the circumstances of each case, the carriers shall be compelled to pay a seventh, or a fourth part, or the full amount of their hire. A master also, dismissing a servant at these periods, shall be forced to give the same.

CHANDE'S'WARA.

This is *apparently* inconsistent with the payment of twice the amount of the wages, as abovementioned; but is reconciled according to CHANDE'S'WARA, by directing the payment of twice the amount of the wages, if a servant cannot be found by any means. If this be said to contradict the text of *Vrĭddha* MENU (LXXXVI), *the answer is*, the text of *Vrĭddha* MENU should be understood as relating to a case, in which it is apparently impossible to find another servant, but in which, after desertion, another servant is accidentally found. If another servant can be immediately found, a seventh part must be paid by him who abandons work, to which he has himself agreed. But he must pay twice the amount of his hire, if he decline the work at the moment when it should be commenced. Again; he, who deserts his employer when a distant portion of the way remains untravelled, shall pay a fourth part of his wages; or their full amount, if he quit him half way. The master also, in similar circumstances, shall pay the proportions of the hire mentioned in this text. Such is the opinion expressed in the *Mitácshará*.

The meaning is this: at home, a master occupied in other business *(and therefore at leisure from the business in question)* can find another servant without trouble; the fine is therefore a seventh part, because the offence is very inconsiderable. A servant, who insolently says at the moment of departure, "I will not perform *the contract*," offends greatly, and shall therefore be fined in twice the amount of his wages. Travelling on the road, and leaving his work at a near place, he does not insolently refuse the *work*, neither can another servant be found without trouble; therefore he shall be

fined

fined a fourth part of the wages. But deserting *his employer* at a distant place, he is a greater offender, and shall therefore be amerced in the full amount of his wages. Thus, the text (LXXXVII) is expounded in the same manner *both* by CHANDE'S'WARA and by the author of the *Mitácsharà*. But the case of one, who disappoints the purpose *for which he is employed* (LXXXV), is different.

LXXXVIII.

Matsya-puràna :—HE, who does not perform *business of* science or art, after receiving a consideration, shall be amerced in the full amount of it, by a king who knows the law.

HERE the consideration must be repaid to the person, who employed him for science or art; as it is repaid to a master by a servant who does not perform the work: but a fine to the king is not here mentioned. However it is directed under a former head.

LXXXIX.

NA'REDA:—THE owner of goods, who hires beasts for draught or burden and takes them not, shall be compelled to pay a fourth part of the hire; or the full amount, if he leave them on the road:

2. And so shall a carrier forfeit his hire, if he transport not *the goods*.

"THE loader;" the *owner* of goods. "*Hiring*," procuring on hire. "Beasts for draught or burden;" horses and the like, or oxen and the rest. "A carrier;" one who receives hire for the carriage of goods.

CHANDE'S'WARA.

BUT others say, since the *loss* of the whole hire, or of a fourth part, is directed in case of desertion on the road, he, who declines the work when *the time for performing it is* yet distant, should pay a seventh part; and the rule,

in regard to the forfeiture of a fourth part, ſhould be underſtood as explained in the former text (LXXXVII).

XC.

Vriddha MENU:—SHOULD a merchant, *having hired a ſervant for a certain journey*, ſell his goods by the way, and diſcharge the ſervant, *wages* muſt be paid even for the part of the way, which they never paſſed, but the ſervant ſhall receive half only of the hire, *which would have been due, if they had gone to their journey's end.*

" THE part of the way, which they never paſſed, ' ſo much of the journey as remains untravelled The *Retnacara.*

" EVEN for the part of the way, which they never paſſed," to the ſervant, though he have not travelled the whole diſtance previouſly ſtipulated, wages ſhall be paid for the work done, but half, or a portion only, of the hire, for the part of the way, which they have not paſſed.

The *Chintament.*

ON the queſtion, whether wages ſhall be withheld, becauſe they have not gone the *whole* journey, the text declares wages ſhall be paid, becauſe the ſervant is not in fault This may be ſtated as meant in the *Retnacara* The word " half " is not here intended for equal parts, but a portion in general, as interpreted in the *Chintament* " he ſhall receive a part of the wages for going that journey, though he have not travelled the *whole* diſtance " and this is reaſonable, ſince the penalty of a fourth part of the hire is directed for deſertion on the way but in this caſe ſomething leſs than a fourth part muſt be paid, ſince he diſcharges the ſervant becauſe he has not occaſion *for his ſervice* and this text may be *literally* applied to the caſe of his ſelling the goods half way

XCI

CA'TYAYANA:—AND if the goods be ſtopped or ſeized on the way, the ſervant ſhall receive wages for ſo much of way as has been paſſed by him.

" BE

" Be ſtopped;" be ſold in conſequence of being ſtopped by any perſon.

Misra and Chandeśwara.

The ſenſe is, that, ſince the diſmiſſion of the ſervant does not ariſe from the merchant's own choice, greater wages ſhall not be paid.

XCII.

Nárada:—A Servant, ſtipulating *wages for a journey*, but leaving the cart on the way, ſhall be forced to give a ſixth part of thoſe wages; but the man, who employs labour and pays not *its hire on demand*, muſt *afterwards* pay it with intereſt *computed from the ſixth month after the demand*.

He, who ſtipulates wages on an agreement in this form, " I will go *the journey*," but leaves on the way the goods for which the cart was hired, ſhall be compelled to give a ſixth part of the amount ſtipulated as wages. Such is the ſenſe of the firſt part.

The *Retnácara*.

And this muſt be explained by a particular application of the text *to a ſpecial caſe*, like the ſeventh part and the like ordained by Yájnyawalcya and others (LXXXVII and LXXXIX.)

But the maſter, if he do not pay the hire of the journey to the ſervant who goes *that journey*, ſhall be compelled to pay it with intereſt.

The *Retnacara*.

It ſhould be mentioned, *that intereſt on wages accrues ſix months* after demand (Book I, v. LVI). Otherwiſe they do not bear intereſt (Book I, v. LXXI)

XCIII.

Vrihaspati:—The maſter, who pays not the hire of labour, after the work is performed, ſhall be compelled by the king to pay it, as well as a proportionate amercement.

It

It ſhould be here underſtood, as in the preceding text, that he muſt pay it with intereſt.

XCIV.

CA'TYA'YANA:—THE maſter, who leaves in the way a tired or ſick ſervant, without taking care of him in a village for three days, ſhall pay the firſt *or loweſt* amercement.

THE maſter, who, not taking care of him in a village for three days, leaves a tired or ſick ſervant, ſhall be fined by the king.

The *Retnácara.*

BY the word "leaves," want of care is implied. That it would be an offence in a tired ſervant, to leave the work, *though* able to carry the burden after recovering from his fatigue, has been poſitively declared by former texts.

HARLOTS have been conſidered by CHANDE'S'WARA and others, under the title of hire, wherefore they are alſo noticed *in this work.*

XCV.

NA'REDA:—A DANCING girl, having received her pay, yet refuſing to attend, ſhall pay twice as much as ſhe received; and, if her employer refuſe to admit her, he ſhall forfeit what he had paid.

XCVI.

Smriti:—BUT, if the harlot attend not when ſent for, becauſe ſhe is indiſpoſed, or fearful, or fatigued, or employed in the ſervice of the king, ſhe is blameleſs.

XCVII.

Matſya-purána.* — A HARLOT, who goes to another man

* I might have been juſtified in omitting theſe laws, by the remark of Sir WILLIAM JONES, when tranſlating other texts under this head from the *Vivádarnava Sétu*, that "the reſt are not worth inſerting:" I am certainly juſtified in forbearing the original tedeſcaya, and in omitting a groſs commentary on theſe and on the preceding texts, for they are ſtrictly applicable to a ſtate of law on caſtes in and ſo cuſtoms. T.

after

after receiving hire, and repays not the money received, ſhall be compelled to pay the lecher's fee, *or twice the amount.*

2. A MAN, approaching a woman without paying her hire, or approaching her in an unlawful manner, or ſcratching her with his nails or the like,

3. Or unnaturally abuſing her perſon, or cauſing her to be approached by many, ſhall be compelled to pay eight times the amount of the hire *promiſed*, and an equal fine.

4. HE, who, on the pretence of one perſon, brings a harlot for the uſe of another, ſhall be amerced by the king in one *máſha* of gold.

5. IF a man employ a dancing girl and give her no pay, he ſhall be compelled to give her twice as much as ſhe ought to have received; and ſhall pay a fine to the king of the ſame amount. Thus juſtice is not violated.

6. THE penalty, ever to be paid by many perſons approaching the ſame woman, is twice the amount *of what ſhe ſhould have received if approached by one only*, and each of them ſhall likewiſe pay twice the amount, as a fine to the king.

XCVIII.

NA'REDA: — IF a diſpute ſhould ariſe among the laſcivious frequenters of her houſe, in reſpect of matters occurring there, the wife have declared, that it ſhall be determined by the principal harlot.

THE hire of a houſe or the like is ſimilar to the hire of labour; it is therefore diſcuſſed by authors in this place. That ſhall be now propounded.

XCIX.

NA'REDA:—He, who dwells in a houſe, which he built on the ground of another man, and for which he pays rent, ſhall take with him, when he leaves it, the thatch, the wood, and the bricks;

2. But, if he live, without paying rent, on the ground of another, without the owner's aſſent, he ſhall by no means, when he quits it, take away the thatch and the timber.

"RENT," a conſideration for abode.

The *Retnácara.*

IT may be explained "hire" and ſo forth.

HE, who dwells in a houſe built at his own charge, or by his own labour, on the land of another, uſed for the ſite of dwelling houſes, may, provided he paid rent for it, take away his own wood, and the bricks of walls and the like, when he ſhifts his abode; or he may ſell the wall as it ſtands. But if he pay no rent whatever, he ſhall not take the graſs, wood, bricks and other component parts of the houſe.

THE hire of a houſe is common in royal cities; in other inſtances alſo, what is uſually paid, in the ſame form with revenue, by tenants reſiding on the land of *Brâhmanas* and the like, is merely hire or rent: for it is not truly revenue, ſince revenue or taxes are the ſixth part *of the produce* and the like, *payable to the king, as ordained by the law.*

C.

NA'REDA:—THE graſs, wood, and bricks, which are thus removed, belong to him who leaves the ground, provided he paid rent for the ſpot; and not otherwiſe.

IN the former texts it had been mentioned, that, *in one caſe*, he may take them; *in the other*, he may not take them. That *diſtinction* is grounded on

property

property and on the want of property. Theſe, therefore, are now explained in this text.

" If he paid rent;" if he paid the price of the abode *granted to him.*

The *Retnácara.*

CI.

CA'TYA'YANA:—He, who hires at a fixed rent a houſe, a pool of water, a market-place, or the like, ſhall be compelled *in a court of juſtice* to pay the rent of it, until he reſtore it to the owner.

" A POOL of water;" one made by another man, and not conſecrated, *but* intended for *uſe in* this world.

The *Retnácara* and *Chintámeni.*

It appears therefore, that no rent ſhould be paid, for a conſecrated pool, to him who made it.

CII.

NA'REDA:—He, who hires at a fixed price, an elephant, a horſe, a bull or cow, an aſs, or a camel, ſhall be made to to pay for the hire of it, as long as he delays to reſtore the cattle, having uſed it according to agreement.

If a thing hired be deſtroyed, it is the poſſeſſor's fault, unleſs the injury happen by the act of GOD: as mentioned under the title of depoſits.

CIII.

Vriddha MENU:—He, who has hired a carriage or *vehicle of any ſort,* and takes it, and goes away with it, but *afterwards* refuſes to pay the hire, ſhall be compelled to pay it, even though he never uſed the carriage.

" A CARRIAGE" generally; meaning only a vehicle of any kind. "Even

ven though he never uſed it;" even though nothing have been carried on it.

The *Retnácara.*

In the *Chintámeni* alſo, the laſt remark occurs; and it is ſaid, a vehicle in general is alone meant. But the ſame rule may be applied to a houſe and the like.

CIV.

NA'REDA:—THINGS, hired *for a time* at a ſettled price, let the hirer give back, when the time has elapſed: whatever be broken or loſt, he ſhall make good, except in the caſe of inevitable accident or irreſiſtible force.

"SETTLED price;" hire. "Inevitable accident or irreſiſtible force;" the act of GOD or of the king. Therefore, a carriage and the like, broken without the act either of GOD or of the king, muſt be made good by the hirer. When the time has elapſed, the thing hired ſhould be reſtored to the owner.

The *Retnácara.*

CONSEQUNTLY, ſhould a carriage or the like, hired at a ſettled price, be loſt without the act of GOD or of the king, it is the hirer's fault; as appears from this law. But MISRA expounds the text; "if it be not reſtored when the time has elapſed, and it be deſtroyed by time or the like, without the act of GOD or of the king, it muſt be made good by the hirer." In his opinion, a thing loſt or injured by the fault of the hirer, without the act of GOD or of the king, muſt be made good by the hirer; as appears from texts cited in Book II, on the ſubject of depoſits and other bailments.

CHAPTER

CHAPTER II.

ON THE NONPERFORMANCE OF AGREEMENTS.

ALTHOUGH nonpayment of wages and hire occur among diſputes between maſter and herdſman, (for which reaſon this title is delivered by VRĬHASPATI immediately after that of nonpayment of wages; and diſputes between maſter and herdſman are placed firſt in the *Retnácara* and other works;) yet nonperformance of agreement has been propounded by MENU immediately after nonpayment of wages: wherefore it is firſt inſerted *in this digeſt (before conteſts ariſing between the owners, and keepers, of cattle).*

I.

MENU:—THIS is the general rule concerning work undertaken for wages or hire: next, I will fully declare the law concerning ſuch men as break their promiſes.

" THIS general rule " *is fully declared* although the wages of herdſmen have not been yet propounded by MENU, the rule in caſe of nonpayment has been delivered, and the wages will be explained *under a ſubſequent head.* " Next I will fully declare &c." breach of promiſe, ſuch as the nonperformance of actual agreements, ſuggeſted *for conſideration* by breach of compact between maſter and ſervant, is *next* propounded.

THE text is thus expounded by CULLŪ́GABHATTA; " this rule concerning work, under the title of nonpayment of wages, has been completely delivered: I will next declare the rule of puniſhment for thoſe who violate their engagements."

II.

VRĬHASPATI:—THIS conduct has been preſcribed to maſters and ſervants; now learn conciſely the rules concerning promiſes.

"PRESCRIBED to maſters and ſervants," including maſter and herdſman; for that title of law is previouſly delivered by VRĬHASPATI. The preſent title of nonperformance of agreements is expounded by CULLŪ'CABHATTA (in *his gloſs on* the fifth verſe of the eighth chapter of MENU) "breach of an agreement made." NA'REDA explains it.

III.

NA'REDA:—THE *general* rule ſettled among irreligious men, and among citizens and the like, is named a compact; *and* the title of law, concerning diſputes ariſing thereon, is called breach of compact.

Paſhenda or irreligious;" excluded from the triple *Vēda*, as the *Yavanas* and others. "Citizens;" townſmen. "And the like;" this term intends companies of traders, artiſans &c. "The rule ſettled," as will be mentioned. An agreement for ſtipulated duties, violated by nonperformance, *is the ſubſequent title.*

The *Retnácara.*

THUS the breach of a general agreement in this, or other form, "we will join to repel thieves and robbers," is a breach of promiſe. An agreement for ſtipulated duties is a compact; nonperformance of it is a breach of compact; and the government of thoſe, who break their engagements, forms a title of law. A ſimilar expoſition is given in the *Mitácſhará.*

IV.

YA'JNYAWALCYA:—HAVING erected a building in the town, and endowed it, and having placed there *Bráhmanas* learned in the three *Vē'las*, let the king enjoin them to obſerve their duty.

HAVING

HAVING erected a building, or houſe of maſonry, or the like, in the town or city, and having placed there *Bráhmanas* learned and virtuous, let him give this injunction, "obſerve your duty."

HAVING erected an endowed building; an edifice enriched by a grant of gold or the like. Such is the meaning, on the concurrent expoſition of the *Mitácſhara* and *Retnácara*. Endowed with land, money, or the like, whereon the prieſts, reſiding there, may ſubſiſt. The intention is, that he ſhould aſſign land, money, or the like, for their maintenance. The ſage declares what ſhould be done by *Brahmanas* ſo enjoined to obſerve their duty.

V.

YA'JNYAWALCYA:—DUTIES, which are ſtipulated or ſeaſonable *(ſo ſamayica may bear either ſenſe)*, or preſcribed by the king, and *which are* not inconſiſtent with their own *regular* duties, ſhould alſo be diligently obſerved *by thoſe prieſts, and enforced by the king.*

DUTIES ariſing from compact, or occurring from ſeaſon, and conſiſtent with moral and civil law, ſuch as care of cattle, preſervation of water, management of temples, and the like, ſhould be diligently obſerved. And the king ſhould enforce the obſervance of ſeaſonable duties, not inconſiſtent with *regular* duty, ſuch as the entertainment of all travellers, and a rule that horſes and the like ſhall not be carried to the dóminions of his enemy.

The *Mitácſharà.*

IT follows, that the prieſts collectively, and the king, are the perſons by whom theſe duties ſhould be obſerved. But "ſeaſonable" is explained in the *Retnácara*, 'rites for the happineſs of ſociety.' Such are monthly benedictions pronounced for the king; and monthly deprecation; and ſimilar duties preſcribed by the ſovereign.

OTHERS hold, that YA'JNYAWALCYA here explains the ſenſe of the word, "duty," in the expreſſion, "enjoin them to obſerve their duty;" acts, which are ſeaſonable, or preſcribed by the king, and not inconſiſtent with their own

own regular duties. Thus it follows from the word, "alſo," that the duties of their tribe and order muſt certainly be obſerved: the preſcribed acts of their tribe and order, ſeaſonable duties, and thoſe commanded by the king, are intended by the term, "their duty." Seaſonable acts have been explained by authors as above. "Duties or rules preſcribed by the king" are ſuch as the following; "for this man, though not degraded, yet fallen under the king's diſpleaſure, no ſacrifice ſhall be performed." Theſe rules muſt be obſerved, if they be not inconſiſtent with regular duty. Therefore an injunction to attend at the king's gate from dawn to evening, or to ſacrifice for all the inhabitants of a town, need not be obſerved; for it would obſtruct the whole of the rites conſtant and occaſional, or be incompatible with ſacrificing for twice-born claſſes only. *Yet* on particular occaſions, an obſtruction to *the performance of* conſtant rites may be admitted. As for the opinion, that a duty occurring with the ſeaſon, ſuch as deprecatory rites and the like, muſt neceſſarily be performed, though not promiſed, it is wrong: for it is founded on no authority, and puniſhment is directed for breach of promiſe only.

VI.

VRĬHASPATI:—ASSEMBLING prieſts endued with knowledge of the *Véda*, learned teachers of the ſcripture, and prieſts who keep a perpetual fire for oblations, let the king eſtabliſh them in that place, and aſſign their ſubſiſtence:

2. Let him grant to them, in his own dominions, houſes and land exempt from taxes, declaring by a written grant, that the royal dues are remitted:

3. They muſt perform, for the townſmen, the conſtant, occaſional, and voluntary rites, and thoſe which are deprecative, or expiatory, and they muſt decide doubtful caſes.

4. A COMPACT, formed on conſultation among the inhabitants of a town, the companies of artiſans, and the ſeveral claſſes of men, muſt be obſerved in a time of alarm, and

and at the feaſon of rites *performed in common*, and alſo *on other occaſions*.

5. If there be apprehenſion of highway robbers or thieves, it is conſidered as a common danger; and ſhould be repelled by all, not in any inſtance by one alone.

6. First eſtabliſhing mutual confidence, by a ſolemn oath, by a written contract, or by the atteſtation of witneſſes, let them next proceed to the buſineſs *agreed on*.

7. Neither men influenced by *cauſeleſs* enmities, or paſſion, nor ſuch as are fooliſh, indolent, timid, rapacious, diſeaſed, or aged, nor infants, may be appointed *chief* adviſers in affairs *(cárya chintaca)*:

8. But thoſe, who are pure, who know the ſcripture and their *own* duties, who have dominion over their paſſions, who are capable, who ſprung from honeſt families, and are ſkilled in all affairs, may be appointed higheſt *of the confederacy*.

9. Two, three, or five perſons ſhould be appointed adviſers *(hitavádin)* of the aſſociation; their counſel ſhould be followed by the inhabitants of the town, the companies of artiſans, and the ſeveral claſſes of men.

lhe prieſt is veſted with property, conſiſting in that office, by the authority of a mandate from the reigning king

" And decide doubtful eaſes" (VI 3), caſes relating to judicial conteſts. This is a juſt interpretation, and conſiſtent with ordinances.

" The inhabitants of the town" (VI 4), *literally*, the town, intending the inhabitants collectively. " Companies of artiſans," meaning a body or multitude of perſons belonging to the ſame tribe and following the ſame profeſſion. " The ſeveral claſſes," *Brahmanas* and the like collectively

Chande'swara.

" Companies of artiſans," workmen or artiſans collectively.

The *Chintâmeni*

What is done after conſultation, by theſe bodies and companies, or by any of them, is a compact or agreement The ſage explains the motive and ſeaſon of ſuch an agreement (" in a time of alarm" &c. VI 4). " Alarm," apprehenſion, or ſuffering, from robbers or the like. " Rites to be performed *in common*," ſuch as faſts and other ſacraments. So Miśra Chande'swara alſo expounds it ſimilarly. By the words, " or the like," it is indicated, that an aſſociation ſhould alſo be formed if injury be ſuffered from the inhabitants of a different town, or from other inhabitants of the ſame town. By the expreſſion, " and alſo," it is intimated, that they proceed in the ſame manner on other occaſions, ſuch as general rejoicings and the like.

Thus it appears, that an agreement ſhould be made for repelling robbers and the reſt The motive of a compact is thereby declared, the *proper* " ſeaſon" is obvious (correſponding with the motive), he declares the form in a *ſubſequent verſe* (VI 6)

" A ſolemn oath," ordeal, as the contact of water which has touched *the feet of* potent deities The meaning of a " written contract" is obvious " Atteſtation of witneſſes " *literally* intermediate perſons; intervening perſons who

who become witneſſes of the compact, and are not partial favourers of any one. The literal ſenſe of the term, intermediate *(madhyá'stha)*, is one who ſtands between *(madhyé tiſṭ'hati)*.

THUS any one of theſe three modes may be employed for the purpoſe of proving the agreement at a ſubſequent time. The conſtruction of the ſentence is, "eſtabliſhing confidence by any one of thoſe three modes."

AMONG thoſe inhabitants of the town and the reſt, if all had *equal* authority, no benefit would ariſe from their various degrees of wiſdom; therefore ſome ſhould be inveſted with chief authority, as adviſers in affairs, to ſhow the beſt *mode of proceeding*. What deſcriptions of perſons they ſhould not inveſt with principal authority, the ſage declares (VI 7). "Men influenced by *cauſeleſs* enmities; *literally* inimical:" he who proceeds to an act without attention to the conſequences of it, is ſaid to be "influenced or impelled;" and the ſuffix here employed bears the ſame ſenſe with the term thus explained by JUMERA.

"INFLUENCED by paſſion" (VI 7); under the impulſe of exceſſive luſt or anger. "Fooliſh:" the term is explained in the *Retnácara*, incapable; but explained by GO'YI'CHANDRA, in the *Sanceſhipta-ſára-panjiſhta*, "idiot."

FROM what deſcriptions of perſons they ſhould appoint their chiefs, the ſage declares (VI 8). "Pure," *that is, virtuous;* not deceitful. "Governing:" having dominion over their organs; void of avarice and the like. "Their counſel ſhould be followed;" conſequently a fine is incurred by a breach of their commands. *This*, YA'JNYAWALCYA expreſsly declares.

VII.

YA'JNYAWALCYA:—THE directions given by the adviſers of the aſſociation ſhould be obſerved by all; he, who diſobeys them, ſhall be compelled to pay the firſt amercement.

THE

THE firſt amercement; meaning two hundred and ſeventy *panas* o coppers.*

The *Mitácſhará*

THIS offence conſiſts in diſobeying the directions given by the adviſer of the aſſociation, CA'TYA'YANA preſcribes a fine for him, who, from inſolence, urges *too obſtinately* his own opinion during a diſcuſſion on buſineſs to be performed.

VIII

CA'TYA'YANA:—HE, who interrupts the reaſonable diſcourſe of a ſpeaker, and allows no other to ſpeak, and he who talks idly, ſhall incur the firſt amercement.

"WHO interrupts reaſonable diſcourſe," who thus breaks in upon it, "you talk abſurdly" one, who mutters, "I alſo will ſpeak, why ſhould theſe talk?" "Who allows no other to ſpeak," *literally* giving no opportunity, one, who gives no opportunity for others to ſpeak, or allows no other *to diſcourſe*, and prates much *himſelf*. Theſe, and he who urges bad advice, inſiſting that it ſhould be adopted as good, ſhall pay the firſt amercement.

In the *Retnacara* it is explained, he, who talks *idly* to the adviſers of the *aſſociation*. The ſenſe may alſo be thus ſtated, He, who behaves with diſreſpect towards them

IX.

YA'JNYAWALCYA:—THIS is the rule for companies of artiſans, traders, and religious men, and for *various* tribes, let the king preſerve their inſtitutions, and oblige them to adhere to the conduct above-mentioned.

the authority of the *Véda;* ſuch are dancers, followers of BUDDHA, and the like. "Tribes;" ſets of men living by the ſame profeſſion, ſuch as ſoldiers and the like. For theſe four deſcriptions of perſons, this is the rule, as propounded in the former text (V). Let the king preſerve their diſtinctions; the rule of duty for the artiſans and the reſt: and let him oblige them to adhere to the conduct abovementioned.

The *Mitácſharà.*

OTHERS take the word *naigama* in its literal ſenſe of trader, as it is explained in AMERA's dictionary.

MANY texts, delivered by YA'JNYAWALCYA immediately after that above quoted (V), will be cited in their places. By tribes are here meant other ſets of men beſides artiſans and the reſt, and different from *Bráhmanas.*

The *Retnácara.*

THUS, in whatever tribe an agreement is made, by that *tribe* it ſhould be obſerved; it follows, that diſobedience to directions given by one who is appointed *prámánica*, or preſident, of barbers or the like, is a cognizable offence. This is the whole meaning.

X.

NA'REDA:—LET the king maintain the aſſociations of irreligious men, of ſectaries who detract from the authority of the *Véda**, of companies of artiſans, traders, and ſoldiers, and of various tribes and the like, both in a place of difficult acceſs and in a frequented ſpot.

"COMPANIES of traders" *(púga):* merchants and the like collectively. Others explain it an aſſemblage of perſons of various claſſes, who have no determinate profeſſion. "Companies of ſoldiers;" armed men *collectively.* "Various tribes and the like;" the term "and the like," *ſuggeſts* multitudes, and crouds.

The *Retnácara.*

THE term "and the like," including all deſcriptions, denotes *that others are* comprehended in thoſe *which are* noticed.

The *Chintámeni.*

XI.

NA'REDA: — WHATEVER be their duties, their *regular* buſineſs, and preſcribed rules, and whatever be the conduct enjoined to them, that *let the king* approve.

"THEIR duties," their preſcriptive uſages. "Their buſineſs," their proper occupation for a livelihood. "Conduct enjoined to them," preſcribed behaviour.

The *Retnácara.*

"THAT approve," the word king muſt be ſupplied in the ſentence: "that let the king approve." Thus it is directed, that he ſhall not act otherwiſe than *is conſiſtent with* their preſcriptive uſages and ſo forth.

XII.

CA'TYA'YANA: — WHATEVER be the duty of *particular* ſocieties, according to that let them conduct all affairs, *firmly* abiding by their own profeſſion.

THIS ſhould be underſtood as coincident with the preſcriptive uſages, or duties, mentioned by NA'REDA.

XIII.

CA'TYA'YANA: — THE aſcertained commands of the king, not inconſiſtent with *regular* duty, ſhould in the firſt place be exactly performed as directed by the king.

2. THE ſinful man, who obeys not ſuch ordinances as are made by the ſovereign, *and are not inconſiſtent with the divine law*, ſhall be rebuked and puniſhed as diſobedient to the royal command.

" NOT inconsistent with *regular* duty;" the prescribed acts of each class and order. " Whatever be the ascertained command of the king" *(not repugnant to that duty)*, such should be the conduct *of the subject*. The sage directs an amercement in case of disobedience (XIII 2): neglect of the king's commands is subjoined as the cause of the offender's being deemed a sinner. This offence consists in the breach of allegiance. VRĬHASPATI now declares the engagements of societies and the like.

XIV.

VRĬHASPATI: — " THE construction of a hall, of a house of " refreshment, or of a temple, a pool or a garden, relief " to the helpless and poor, sacrificial rites,

2. " A common way, and mutual defence, shall be effected " by us, according to *our several* proportions;" if such a written contract be made, it is a binding engagement,

3. And must be observed by all. Of him, who refuses *his part*, though able *to perform it*, the punishment is forfeiture of *all his* property, and banishment from the town:

4. And for that man, who contradicts *his associates*, or neglects *his part*, a fine is ordained of six *nishcas* containing four *suvernas* each.

IN the case of an agreement for the construction of a hall or the like, *which is* the highest association, if a man break his engagement, though able to perform it, he shall be punished by confiscation of all his property and banishment from the country: and this punishment is directed for the case where he formerly said, "I will perform it," but now says, "I will not perform it." In case of neglect, another punishment is directed (XIV 4): *the first term in that text* is explained by AMERA, 'contradiction.' Thus, if a man, having previously formed an engagement, conspire with some party to break it, he shall be fined in six *nishcas* containing four *suvernas* each;

or if he be guilty of neglect, (that is, if he do not give attention to it), he shall be fined in the same amount.

Others hold, that an adviser in affairs *of the association* is guilty of neglect, if he do not coerce one who refuses *to perform his part*, and shall therefore be amerced: and any stranger also may be amerced, if he interfere to break the association.

"A common way" (XIV 2): *literally* a family-way; a road for a family. "Mutual defence:" *literally* resistance; *meaning* opposition to the inroads of bad men.

The *Retnácara.*

XV.

Menu:—The man, among the traders and other inhabitants of a town or district, who breaks a promise through avarice, though he had taken an oath to perform it, let the king banish from his realm.

2. Or, *according to circumstances*, let the judge, having arrested the promise breaker, condemn him to pay six *nishcas*, or four *suvernas*, or one *satamána* of silver, or all three *if he deserve such a fine.*

3. Among all citizens and in all classes, let a just king observe this rule for imposing fines on men, who shall break their engagements.

"A town;" in its usual sense. "A district;" a number of towns. "Traders and others;" a multitude of persons following the same profession, but residing in several districts. "Having arrested" *(nigrihya)*; this may be expounded, having admonished. Six *nishcas*, or four *suvernas*: *the words may signify* six of those *nishcas* which weigh four *suvernas* each; to exclude other quantities, namely the *nishca* of one hundred and fifty *suvernas*, and the *nishca* of five *suvernas*.

The *Retnácara.*

Misra

MISRA delivers the ſame expoſition, and adds; "MENU here intends ſix *niſcas*, and has further directed a *śatamána* of ſilver." A *śatamána* contaios three hundred and twenty *ratticás* or ſeeds of the *gunjá*.

CULLU'CABHATTA holds, that, according to circumſtances which may aggravate or extenuate the fault, the puniſhment ſhould be exile, and fines of ſix *niſcas* and one *śatamána*; all, or each of them.

THUS, in concurrence with VRĪHASPATI, exile *is the penalty directed* in caſe of refuſal; a fine of ſix *niſcas*, in caſe of oppoſition or negligence; and a fine of one *śatamána*, in the caſe of a ſlighter offence.

"ALL claſſes" (XV 3): an aſſemblage of ſeveral claſſes.

The *Retnácara*.

XVI.

NA'REDA:—THOSE eſpecially ſhould be puniſhed, who ſeparate *themſelves* from the aſſociation: they ſhould undergo ſear and terrour, being avoided like diſeaſed perſons.

"WHO ſeparate from the aſſociation;" who violate the engagement formed by the community.

XVII.

YA'JNYAWALCYA:—HIM, who embezzles the property of the company, and him, who violates his engagement, let the king baniſh from the realm, after *confiſcating* all his effects.

"THE property of the company;" the joint property of all the citizens and the like.

The *Retnácara*.

VIJNYA'NE'SWARA gives a ſimilar expoſition, but adds, that, "in the caſe of a breach of compact or engagement enjoined by the king, or formed by the ſociety, if the offence be great, the penalty is baniſhment from the

realm; but, if the offence be slight, *it shall not exceed* the amercements abovementioned, as propounded by MENU.'

SOME explain it as intending the penalty for embezzling money set apart for the purpose of building a temple or the like.

XVIII.

CA'TYA'YANA:—BHRĬGU directs, that all those, who commit violences, oppose *the general will*, and dissipate the wealth of the community, shall be punished, after giving notice to the king.

"WHO commit violences;" who use force against the society, by blows and the like "Who dissipate the wealth of the community;" who destroy property amassed by the association for a temple or the like. "They should be punished. they should be fined in the amercement directed, for an amercement of six *nishcas* is ordained in case of opposition. They shall not be banished or expelled, *as the term* uchchédya *might seem to denote.* Or it may be understood, that, in case of opposition, if the offence be great, *the penalty is* expulsion.

XIX.

VRĬHASPATI:—HE, who injures or dissipates the common stock, or breaks his engagement, shall be banished from the town for that *offence*, even though he be learned in the triple *Véda*.

XX.

The Same.—AN insulting and malevolent man, one who opposes *the society* or commits violences, and an enemy to the company of artisans, to the society of traders, or to the king, should be instantly banished.

"INSULTING," hurting *the* minds of others. "Malevolent;" inimical.

XXI.

VRĬHASPATI:—LET the chiefs of families, of aſſociated artiſans, or of tribes, whether reſiding in towns or forts, curſe and forſake ſinners.

"CURSE;" puniſh with maledictions.

The *Retnâcara.*

By this text it is thus declared legal for the chief of a family or the like, to inflict puniſhment on offenders.

XXII.

VRĬHASPATI:—WHATEVER be done by them according to their duty, whether harſh or kind towards *other* men, ſhould be *firſt* approved *by their chiefs:* theſe indeed are conſidered as undoubted actors *in all affairs.*

"ACCORDING to their duty;" not repugnant to it. "Undoubted actors;" undoubted *guides* in affairs.

CHANDE'SWARA.

WHATEVER buſineſs any perſon, included in the aſſociation, performs conſiſtently with regular duty, that ſhould have been *previouſly* authorized by the chief.

XXIII.

VRĬHASPATI:—IF they conſpire, from an impulſe of enmity, to injure one *of the ſociety,* they ſhould be reſtrained by the king; and actual injuries ſhall be puniſhed.

AMONG aſſociates, if ſeveral unite to hurt one, the king ſhould reſtrain them; and if they do a wrong by verbal deception or the like, he ſhall chaſtiſe them: and the puniſhment in this caſe ſhould be exile or the like, according to the magnitude of the injury.

XXIV.

XXIV.

VRĬHASPATI:—IF a quarrel arife between the chiefs and the communities, let the king decide it, and reduce them to their duty.

IF there be a difpute between the communities and their chiefs (meaning the perfons inveſted with authority, and called *preſidents* or *pramánica)*, let the king determine the controverſy according to the proof of their diſobedience to their chiefs, and in conſequence of his deciſion, either puniſhing or not puniſhing them, *or their chiefs*, according to circumſtances let him reduce them to their duty. But if the diſobedience be heinous, baniſhment is proper.

XXV.

NA'REDA:—PROMISCUOUS aſſemblies of thoſe *perſons*, military array without cauſe, and reciprocal injuries, let not the king tolerate.

"PROMISCUOUS aſſemblies," a ſuperiour ſociety mingled with another of inferiour rank. "Military array without cauſe," without a ſufficient motive, ſuch as apprehenſion of danger and the like. "Mutual injuries," reciprocal wrongs. "Thoſe *perſons*," irreligious men and the reſt, as already mentioned by NA'REDA (III).

The *Retnácara.*

SOLDIERS and the like may carry arms even without a ſpecial motive. The ſenſe reſulting from the text is, that the king ſhould reſtrain all others from *meeting in* promiſcuous aſſemblies, *from carrying arms without cauſe*, and ſo forth.

XXVI.

CA'TYA'YANA:—HE, who *uſually* eats off the ſame veſſel, or in the ſame line with another, ſhall be amerced if he refuſe to do ſo without ſhowing a *reaſonable ground of* exception.

HE,

He, who refuſes to do ſo, ſhall be amerced.

The *Retnácara.*

It is cuſtomary with ſome *tribes*, for many perſons to join and eat off the ſame veſſel. The rule is general: he, who *uſually* eats another's food, may not, through perverſeneſs, without ſtating a reaſonable ground of exception, or other ſufficient cauſe, reject food given by that perſon. It may be *alſo* determined, that even if *the practice originated in ſuch motives, as are mentioned* in the *Mahábhárata*, "through friendſhip food may be eaten *from each other's hands*, or it may be *ſo* eaten through extreme diſtreſs;" even then a motive *for refuſal* ſhould be ſhown, *namely* a breach of that friendſhip, which was the previous motive for eating food from each other's *hands*.

XXVII.

Vrĭhaspati:—Those traders, who conſpire to abſcond and defraud the king of his due, ſhall be compelled to pay eight times the amount.

Literally the king's ſhare, *meaning* the king's due.

The *Chintámeni.*

Thus, if merchants going for the purpoſes of trade, and buying and ſelling goods, abſcond in the night after promiſing to pay the king's taxes, he may take from them eight times the amount of his taxes; or in the ſame inſtance the chief of the company *may levy that penalty*. Theſe two laws concerning ſocieties (v. XXVI, &c. v. XXVII) are mentioned incidentally.

XXVIII.

Na'reda:—Let the king reſtrain them from acts which are injurious to him, which in their nature are vile, or which obſtruct his affairs:

2. And let a king, who deſires proſperity, repreſs ſinful proceedings, which are unauthorized by moral law, if they be actually attempted.

Literally

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2. And let a king, who deſires proſperity, repreſs ſinful proceedings, which are unauthorized by moral law, if they be actually attempted.

Literally

Literally disapproved by nature; " acts, which in their nature are vile." " Sinful proceedings," as the practice of gaming and the like; acts not productive of good. " Unauthorized by moral law;" not familiar under moral institutions. " Restrain them;" the irreligious men and the rest (111).

The *Retnácara.*

SINCE whatever general agreement has been made by irreligious men and the rest, must be observed; and if they break it, they must be punished by the king; *it might*, therefore, *be inferred, that* every agreement, *even though illegal*, must be maintained: for instance, " we will all prevent the subjects from paying taxes to the king; or, " let us always go naked;" or the following, " we will game; we will solace ourselves with harlots; we will run on the king's highway; let us worship an ant-hill under a *śáceťaca* tree."* It may be affirmed, that this text is intended to prevent such an inference.

XXIX.

YA'JNAYWALACYA:—WHEN their business is finished, let the king dismiss those, who have attended for the affairs of a community, after honouring them with *tokens of* regard, with gifts and with expressions of civility.

2. WHATEVER a man, who is sent on the affairs of a community, shall receive, let him deliver *to his principals*; if he do not voluntarily deliver it, he shall be compelled to pay eleven times the amount.

LET the king, having finished their business, dismiss persons who have attended him on the affairs of a community, and honour them with tokens of regard, with gifts, and with expressions of civility: such is the meaning according to the *Mitácsará.*

" TOKENS of regard;" allowing them seats and the like. " Gifts;"

* The rough leaved trophis of botanists, called in the vernacular dialects *S'ábir'a* or *Sjaura.* The author alludes to a proverbial expression of contempt; " thou art like an ant hill under a *S'abir'a* tree." The plant itself also furnishes a contemptuous simile.

honorary

honorary presents of clothes and the like. " Expressions of civility;" compliments. The meaning is, that attention should be shown by the king to the affairs of a community.

THE second verse is thus expounded by VIJNYA'NE'SWARA; 'a person, deputed by merchants * to attend the king on the affairs of the community, should, even unasked, deliver to those merchants whatever clothes, money, or other things may be received. Otherwise he shall be compelled to pay a fine equal to eleven times the amount of what was received. Consequently, whatever is given by the king, in an honorary form, to one deputed on the affairs of a community, should be received by all the members of it.

XXX.

VRĬHASPATI:—WHATEVER he may there obtain, is the property of all *the associates*, and should be divided according to their several proportions, whether it have been received six months or one month.

" THERE;" at the king's palace. In declaring it the property of all, without a restriction, that only that, which is given to all, belongs to all, the meaning is this; whatever is received by some of the associates, while attending at the king's palace, is the property of all. It is observed in the *Retnácara*, that " six months or one month" are mentioned in an indefinite sense. Consequently it is meant, that after many days they may collect and divide effects received: and that is optional.

XXXI.

VRĬHASPATI:—OR it should be given to the poor, the aged, or the blind, to women or infants, to afflicted, diseased, or childless persons, or other *needy* people; this is the primeval rule.

2. WHAT is acquired and kept by those *members of a com-*

* *Sreshtee*, usually employed in its literal sense of a great or respected person, but here seems to signify a merchant, as in the common dialect.

munity,

munity, or borrowed for the uſe of the ſociety, or obtained as a preſent from the king, is common to all *the aſſociates*.

" DISEASED," other than one afflicted *with pain (atura)*.

CHANDE'SWARA.

BUT HELAYU'DHA reads *acata*, inſtead of *atura*, and explains it handleſs *or maimed*.

" CHILDLESS perſons or other *needy* people," under this are comprehended others (beſides thoſe enumerated), who ſhould be maintained by the tribe, or by the company of artiſans or the like, and whom the ſage contemplated.

CHANDE'SWARA.

" POOR;" indigent. Thus a gift to thoſe, whom it is neceſſary to maintain, is approved; and that ſhould be in proportion to the reſpective ſhares of all the givers.

XXXII.

CA'TYA'YANA:—WHATEVER is borrowed on pretext of a community, and is conſumed or diſſipated for their own purpoſes, muſt be made good by thoſe, *who borrowed it*.

" WHAT is borrowed on pretext of a community," under pretence of the ſociety, by fraud in the name of the community, muſt be made good by the borrowers.

The *Chintámeni* and *Retnácara*.

" DISSIPATED" *or altered*; given away. This is merely an inſtance ſhown, the contracting of a debt is meant by the text. It is directed by VRIHASPATI (XXXI 2), that a debt, contracted on account of the community, ſhall in general be diſcharged by all *the members of it*, this text (XXXII) declares, that in ſome particular inſtances it ſhall not be *ſo* diſcharged.

XXXIII

XXXIII.

CA'TAYA'YANA:—ALL thoſe, who are admitted into a ſociety of *traders*, or company of artiſans, *or other community*, ſhare equally the previous ſtock and the debts.

EVEN thoſe, who are ſubſequently admitted, by general conſent, into a ſociety or other community of traders or the like, become ſharers of the actual ſtock and debts, or of the capital inveſted in commerce and ſo forth.

The *Chintámeni* and *Retnácara*.

IT ſhould be underſtood, that, if an agreement be made by general conſent, at the time of admiſſion, in this form, "I have no ſhare in the gain, loſs, or other *occurrence* prior *to admiſſion*;" in that caſe he does not partake of the gain, loſs, or the like. This is conſiſtent with reaſon.

XXXIV.

CA'TYA'YANA:—THUS alſo he, who remains in the ſociety, is a ſharer in *all* matters relating to proviſions, partible ſtock, gifts, and duty; but he, who forſakes it, is entitled to no ſhare.

THE term, *all* matters, *or acts*, is referred to the other terms ſeverally. "Proviſions," or eatables; ſweetmeats and the like. "Partible ſtock;" grain and the like. "But he, who forſakes it, is entitled to no ſhare;" he who forſakes the ſociety, or withdraws himſelf from the community, on motives of his own, is not entitled to any ſhare.

The *Retnácara* and *Chintámeni*.

THE meaning is this; of what is conſumed by the ſociety, ſhares are received by thoſe only, who remain in the community: and that, which is diſtributed, ſhall be ſhared by them only; not by thoſe, who are out of the ſociety at the time of partition, on the grounds of their having been members of it when the effects were acquired. Moreover, if any thing be given, or any other legal act be done, by any one member of the community, all the members of it are partakers of the act: and in the caſe

of a gift made by one, it is a valid gift on the part of the whole community, provided the donation were made by him while he was a member of it.

THESE engagements of members of communities have been propounded; the mutual agreements of two persons should also be discussed. For instance, "if thou giveſt *that*, then I will give *this*, if thou doſt *that*, I will do *this*; if thou doſt *that*, I will give *this*, if thou giveſt *that*, I will do *this*;" such, and of many other sorts, are mutual promises. In these instances, "if," or "when," denoting a contingency, and a contingency implying two parts, both payment and nonpayment are signified. Thus, (from the the general construction of words mentioned in successive order,) by expressing, "in case of thy gift *being delivered*, my gift *shall be delivered*," it is in effect declared, "my gift shall be withheld, in case thy gift be withheld." therefore, the withholding of the gift is stated as one part of the contingency; and hence no other penalty is directed. But where the promise is a general declaration, ascertaining work to be done, and wages to be paid, in this form, "thou shalt perform the work, and I will pay the wages," in that case, since nonperformance of work and nonpayment of wages are not expressed, another penalty is proper *in the event of a breach of promise on either part.*

"IF thou shouldſt do *that*, I would do *this*," such a declaration is no promise· for the conditional future tense expresses something dependent on an event, and implies *possible* non-performance.

CHAPTER

An ox, which carries the weight of two thouſand *ſuvernis*, is valued at ſo much, one, able to carry a burden equal to four thouſand *ſuvernas*, is valued at ſo much: ſuch is the general uſage. Other lawyers *explain* "*by work*," *by the load*; *as much* cleft wood *as is* portable by one perſon, and ſo forth.

"By beauty;" handſome women and the like ſold according to their perſonal charms. The *Retnácari*.

A handsome female *ſold* by *beauty*, according to the difference of complexion. Other lawyers explain it, ſtones and the like *ſold by their beauty*.

"By ſplendour;" pearls, *gems* and the like ſold by their luſtre. The *Retnácara*.

IV.

Na'reda:—He, who is diſſatisfied with his purchaſe, after buying a commodity for a *juſt* price, is called a reſcinder of purchaſe, *which is* a title of judicial procedure.

That man, who is diſſatisfied, is named the reſcinder of purchaſe, a title of law: meaning him, who reſcinds a purchaſe. But other lawyers hold, that the title of law is *ſomething* appertaining to that man: his diſſatisfaction is, in law, termed reſciſſion of purchaſe; for his diſcontent is the cauſe of litigation.

The ſame legiſlator declares what ſhould be done in caſe of reſciſſion.

V.

Na'reda:—If a man, having bought for a juſt price any *cloth or other conſumable* commodity *except ſeed-grain*, ſhould ſuſpect, that he had made a bad purchaſe, he may return it on that very day to the ſeller, unleſs it be diminiſhed.

2. The buyer, who returns it on the ſecond day, ſhall give *the*

the ſeller a thirtieth part of the price; on the third day, twice as much, *or a fifteenth:* and, after that, it is abſolutely his own.

"A THIRTIETH part of the price;" the thirtieth part above the price: and this relates to cloth and other commodities liable to deſtruction by uſe, except ſeed-grain.

The *Retnácara.*

OTHERS ſay, that, if the buyer return it on the ſecond day, the ſeller ſhall receive the thirtieth part of the price.

"TWICE as much:" twice a thirtieth; that is, a fifteenth according to the opinion of other lawyers. After that *period,* the purchaſe muſt not be reſcinded.

IN the *Mitácſharà, a reaſon for the exception* is mentioned; "becauſe a diſtinct period will be directed for returning ſeed-*grain* and the like." In the *Retnácara* it is ſaid, "this relates to cloth and other commodities liable to deſtruction by uſe, except grain." In the *Chintámeni it is obſerved;* "this *rule* is applicable to thoſe things, for the examination of which three days are allowed." The following text declares the time allowed for the examination of grain and other commodities.

VI.

YA'JNYAWALCYA:—THE time allowed for the trial and examination of ſeed-*grain* is ten days; of iron, one day; of *bulls and other* beaſts of burden, five days; of *pearls* and gems, ſeven days; of female ſlaves, one month; of milch cattle, three days; of male ſlaves, half a month.

"SEED;" grain to be ſown and the like. "Beaſts of burden;" bulls and other cattle." "Gems;" pearls and precious ſtones. "Women;" female ſlaves. "Milch cattle;" female buffaloes and the like. "Men;" male ſlaves. For the examination of theſe (namely of ſeed and the reſt) the time allowed is,

in

in their order, ten days, *one day*, and ſo forth. The ſenſe expreſſed is, that, if reſciſſion be propoſed, on the diſcovery of a defect when the ſeed or other grain is examined, the purchaſe may be cancelled within ten days; but not later.

VII.

MENU:—A MAN, who has bought or ſold any thing in this world, *that has a fixed price and is not periſhable, as land or metals*, and wiſhes to reſcind the contract, may give or take back ſuch a thing within ten days.*

BUT this text of MENU relates to all things bought without examination ſince there are texts repugnant to a reſciſſion of the contract on the tenth day, and ſo forth.

The *Retnácara.*

THE text of MENU concerns things not very liable to deſtruction by uſe, as a houſe, a field, a car, a chair, a bed and the like, excepting iron, and other things, *for the trial of which a different period is allowed.*

VIII.

CA'TYA'YANA:—IF a man, having bought vendible things, as milch cattle and the like, which have no blemiſh, repent of his bargain, and give them up within the limited time, *and before they are delivered to him*, he *muſt pay* a tenth part of the price to the owner.

2. BUT, if a buyer have received the commodity ſold, and repent of his purchaſe, BRIHĬGU has ordained, that he ſhall pay a ſixth part of the price, when he returns it.

"IF he have received the commodity;" if he have taken poſſeſſion of it.

The *Retnácara.*

* See the commentary on this text quoted again at v. XXIII.

THE

THE inconsistent penalties of a sixth and a tenth part are reconciled, by MISRA and CHANDE'SWARA, from the circumstance of the buyer's having, or not having, received the commodity. Thus, if the thing, which he bought, remained with the vender, he forfeits a tenth part of the price; if he carried it home, he forfeits a sixth of the price.

SHOULD it be said, this is inconsistent with the forfeiture of a thirtieth part; the answer is, there is no inconsistency: for the penalty of a thirtieth part is established in the case of things other than milch cattle and the like; and the forfeiture of a tenth part *is established* in the case of milch cattle and the rest.

CHANDE'SWARA remarks, that both these texts of CA'TYA'YANA relate to things bought without examination.

IX.

YA'JNYAWALCYA:—A RETURN of commodities, once bought, shall not be made by a merchant who well knows the profit and loss on vendible things: if he obstinately persist in returning them, he shall pay a sixth part as a fine *to the king*.

A RETURN of commodities, bought after examination, shall not be made by a purchaser, who perceives not any advantage, after making the purchase, *from rescinding his contract* as one made for a less quantity than what the price bore at the time of the purchase; nor shall the contract be rescinded by a vender, who perceives no loss on the commodity, in consequence of the rate exceeding the market price. But the buyer and seller may rescind the contract, if they perceive such gain or loss. The text is delivered for the sake of this exception.

The *Mitácshara*

IN the *Retnácara* a similar exposition is given. Thus, after the purchase of a commodity examined, if the purchaser think it bought for too high a price, he may return it, after ascertaining the excessive price; but not without ascertaining it. *Consequently* the purchase even of a commodity examined may be rescinded.

IN

In the *Calpateru* the text is read, *abhyánatá*, well acquainted with the profit and loſs on vendible things, inſtead of *avyánatá*, not perceiving profit or loſs on vendible things; and the ſame reading occurs in ſome places of the *Chintámeni*. According to that *reading*, if a thing be knowingly bought at a high price from the exigency of affairs, the contract cannot be afterwards reſcinded. But the *Retnacara* rejects that reading, becauſe it diſagrees with *copies of* YA'JNYAWALCYA, and with the *Pracaſa*, HELA'YUDHA and the *Páryáta*.* In fact there can be no return of a commodity voluntarily purchaſed at a high price, in a cheap ſeaſon, by one who actually knew the price to be great.

Rescission of contract and a penalty have been propounded in the caſe of a commodity bought without trial. In the caſe of commodities bought after examination, reſciſſion has alſo been allowed in conſequence of diſcovering the price to be exceſſive, and ſo forth. What is to be done in regard to the purchaſe of a thing examined, *if no increaſe or diminution of price* be diſcovered, is now ſtated.

X.

NA'RE'DA:—A TRADER, ſkilled in the value of vendible articles, ſhall not return thoſe, which he has bought: it is his duty to know what may be the loſs on each article, and what the gain.

2. A BUYER ought at firſt himſelf to inſpect the commodity and aſcertain what is good and bad in it; and what, after ſuch inſpection, he has agreed to buy, he ſhall not return to the ſeller, *unleſs it had a concealed blemiſh.*

If he bought a thing for a great price, at a ſeaſon when the *general* rates were moderate; or a damaged article, for the price of undamaged goods; may he not juſtify the reſciſſion of the contract? Therefore the ſage ſays; "it is his duty to know what may be the loſs on each article, and what

* I have nevertheleſs retained the verſion of the text as it is read by LACSHMI'DHERA, author of the *Calpateru*. T.

the gain." Consequently, the price should be verified, and the commodity examined, before the purchase be completed.

"And what, after such inspection, he has agreed to buy;" what he has agreed to purchase, after trial and examination of its qualities and defects, deeming it such as he desired, and free from blemish, and so forth. Or the sense may be; what he has agreed to buy, having approved it after discussing the price.

XI.

VRĬHASPATI:—LET a buyer himself examine the commodity and show it to others; when, after inspection and approbation, he has accepted it, he shall not return it.

"And show it to others;" to confirm the examination. But if he wish to return a thing so examined, and do not show an excess in the price, which was unknown to him at the time of purchase, he shall pay a fine equal to a sixth part, as directed by YA'JNYAWALCYA. Such is the ultimate sense of the text.

XII.

VYA'SA:—GRASS, wood, bricks, thread, *common* grain *not to be sown*, wine *or other* liquids, cloth, base or precious metals, ought to be inspected immediately.

"Grain," except seed; for YA'JNYAWALCYA has declared, that the time, allowed for examining seed-grain, is ten days.

XIII.

NA'REDA:—MILCH cattle should be examined within three days; beasts of burden, within five; but the examination of pearls, gems, and coral, must be within seven days;

2. Of male slaves, within half a month; of females, within one month; of *rice and all other* seeds, within ten days; of iron and wearing apparel, within one day. SINCE

SINCE one day is allowed by NA'REDA for the inſpection of wearing apparel, the word, "immediately," in the text of VYA'SA ſhould be taken in the ſame ſenſe.

CHANDE'SWARA.

IT ſhould not be ſaid, that the term, one day, may ſignify immediately *(ſadyah)*; becauſe one is neceſſarily denoted by this term, and *ſadyah* is explained by AMERA, at the inſtant. The word, *ſadyah*, ("immediately,") ſometimes ſignifies on that day; but the term, one day, does not always ſignify immediately. However *ſadyah* is formed by the ſuffix *dyah*, which conveys the ſenſe of day.

IF it be ſaid, that *in this text*, the direction for milch cattle to be examined within three days is ſuperfluous, becauſe it has the ſame meaning with the former text of NA'REDA, directing the buyer to pay a fifteenth part on the third day; or after that, the commodity is abſolutely his own (V 2); ſome lawyers anſwer, "the former text lays down a ſpecial rule reſpecting things returnable in three days; but this text (XIII) allows three days for the examination of milch cattle; and MISRA has remarked on the former text (V 2), that the rule is applicable to thoſe things, for the examination of which three days are allowed.

OTHERS, relying on the opinion of CHANDE'SWARA, hold, that the former text concerns cloth and other commodities liable to deſtruction by uſe, and regulates the particular conſequences according to the particular day *on which the commodity is returned*; but this text regulates the other *general* effect of any how returning the thing within three days.

AFTER declaring the time allowed for trial and examination, in the ſame order as delivered by NA'REDA, the following text is cited in the *Retnácara*.

XIV.

VRIHASPATI:—WITHIN thoſe times, if a blemiſh be any where diſcovered in the commodity purchaſed, it muſt be returned to the ſeller, and the purchaſer ſhall take back the price.

IN

In this text there is a various reading, *sanjnyáyaté*, instead of *sanjayaté* be known or discovered; in both readings the sense is the same; for it is consistent with the reason of the law, and with the text of CA'TYA'YANA.

XV.

CA'TYA'YANA:—But an unexamined commodity being bought and afterwards proved to have a blemish, it must be returned to its owner within the limited time, and not otherwise.

"The limited time;" the period allowed for trial and examination of it. "Not otherwise;" not after the time allowed for inspection.

The *Retnácara.*

Consequently the purchase may be cancelled, if a blemish be discovered within the time limited for examination; but not, if a thing bought, and placed in the buyer's house, be accidentally damaged within the time allowed for detecting blemishes.

Is not this repugnant to the text of Menu (Book II, Chapter II, v. LXI); for by saying, it shall never be sold, the sale is declared illegal; and that shows a thing to be returnable even after the time allowed for inspection? If it were sold with a concealed blemish, then it may be returned even after a very long time. So the *Chintárani.*

Consequently, if it were sold with a blemish known to both parties,* it may be returned within the time limited for inspection; if it were fraudulently sold with a concealed blemish, it may be returned at any time.

One commodity mixed with another of inferiour value, as saffron adulterated with safflower, *shall never be sold as unmixed;* nor a bad commodity, or one which has some blemish different from what is disclosed; nor less

* So the MS I suspect an error, the author's meaning must surely be, sold with a blemish unknown to both parties. T.

than

than agreed on; nor a thing kept at a diſtance, that its qualities and defects may not be known, nor a thing concealed, or covered with a cloth

The *Retnacara**.

But the author of the *Chintamani*, after ſtating all this, adds, when any one of theſe *objections to the purchaſe* is diſcovered, the thing may be returned even after a very long time.

XVI.

Na'reda:—But a mantle, that has been worn, and is tattered and ſoiled, yet is bought with thoſe known blemiſhes, cannot be returned to the ſeller.

The text ſhould be ſupplied, "yet is bought with thoſe *known* blemiſhes." From parity of reaſoning, it may extend alſo to other goods bought with ſuch blemiſhes.

The *Retnácara*.

† In a gloſs on the text of Menu above cited (Book II, Chapter II, v. LXI)

SECTION II.

ON RESCISSION OF SALE.

XVII.

NA'REDA:—WHEN a vendible thing, ſold for a *juſt* price, is not delivered to the purchaſer, this is called non-delivery of a thing ſold, a title of judicial procedure.

THAT thing, which is not delivered, is called by this technical title. Or the relative is an epithet of the thing ſold; the non-delivery of that *vendible* thing, which is ſold but not delivered, is called a title of law. Or the terms may be uncompounded; *ſale and non-delivery*. The ſame is intended by MENU in the term "reſciſſion of ſale."

THE following text declares the rule in this caſe.

XVIII.

NA'REDA:—HE then, who, having ſold vendible property for a juſt price, delivers it not to the buyer, ſhall be compelled, if it be immoveable, to pay for any ſubſequent damage, *as the loſs of a crop and the like;* and if moveable, for the uſe and profits of it.

"SUBSEQUENT damage;" as loſs by treſpaſſes *of cattle* on the crop, and the like. "The uſe;" *literally* the work: as the carriage of burdens, and ſo forth. "Profits;" as milk and the like.

The *Retnácara.*

THE *Chintámeni* gives a ſimilar expoſition. It muſt be obſerved, that the produce of land or the like ought alſo to be given. Some hold, that *ghara* ſignifying inhabited ground, implies the rent of a habitation, conformably

with

with the ſenſe of the root *cſhi*, which ſignifies to inhabit, as well as to go. But others ſay, that *cſhaya* denotes the loſs of an expected crop, or the loſs of houſe rent and ſo forth, and that this is meant in the gloſs of the *Chintámani*, by the term, "loſs of a crop or the like."

XIX.

NA'REDA.—SHOULD the value be diminiſhed *in the interval*, he ſhall deliver it together with the difference of the value: ſuch is the rule for merchants in the ſame place; but, among thoſe, who trade to foreign countries, the foreign profit muſt be made good *to the purchaſer*.

IF gems or the like, ſold but not delivered by the vender, ſink in value, if their price be gradually diminiſhed, they ſhall be delivered to the purchaſer with the difference of the value. *But*, among thoſe, who trade to foreign countries, (among thoſe, who are accuſtomed to travel to other countries, *for the purpoſes of commerce,*) the vender ſhall make good the profit, which might have been obtained by going to a foreign country

VA'CHESPATI MISRA

THE ſame expoſition is delivered in the *Retnacara*. But others hold, that the rule concerning immoveable and moveable effects is ſtated generally in the firſt text (XVIII), and a particular rule is delivered in the ſecond verſe (XIX), for it is expreſſed conditionally Thus, ſhould the value of a thing, whether moveable or immoveable, be diminiſhed, the difference of the value muſt be made good, as well as the damage and ſo forth, as directed in the firſt text and if any one of thoſe things were fit for foreign trade, the foreign profit muſt be made good, as mentioned by MISRA; not the charge of tranſport and the like in the ſame country. It ſhould not be objected, that almoſt all cattle and merchandiſe are fit for foreign trade. It is implied, that the purchaſer bought the thing for that purpoſe, *or that* the cattle or goods were actually employed in foreign trade

XX.

NAREDA:—THIS rule has been declared for vendible commodities,

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XX.

NA'REDA:—THIS rule has been declared for vendible commodities,

modities, of which the price has been paid *or tendered;* but where it has not been paid *or tendered,* there is no injury to the buyer by *delaying the delivery,* unleſs there have been a ſpecial agreement *as to the times of delivery and payment.*

If the ſeller had received the whole price, he muſt pay for the damage and ſo forth; but there is no offence in his keeping the commodity to obtain payment.

MISRA.

CONSEQUENTLY, it is an offence to detain it knaviſhly, without a ſufficient cauſe.

XXI.

YA'JNYAWALAYA:—HE, who, having received the price of a thing ſold, delivers not that thing to the buyer, ſhall be compelled to deliver it together with intereſt; or among thoſe, who trade to foreign countries, with the foreign profit.

"INTEREST" muſt be underſtood to be an increaſe on account of the difference of price. But, in a gloſs on the text of NA'REDA, an opinion is advanced in the *Mitácſhará,* that the profit, which would have ariſen from the ſale of the commodity, muſt be made good; or twice, or thrice the rent of a houſe, or the like; or the rate *of intereſt* directed under the title of loans; at the option of the buyer.

XXII.

VISHNU:—HE, who having received the price of a thing ſold, delivers not that thing to the buyer, ſhall be *made to pay him the value of it with damages and* be fined a hundred *panas* of copper *to the king.**

THIS text alſo has the ſame import with that of NA'REDA; but further directs an amercement.

* I inſert the whole text, as it is cited in other works; a part of it ſeems to have been here omitted by miſtake. T.

XXIII.

MENU:—A MAN, who has bought or sold any thing in this world, *that has a fixed price and is not perishable, as land or metals*, and wishes to rescind the contract, may give or take back such a thing within ten days;*

2. But, after ten days, he shall neither give nor take it back: the giver or the taker, *except by consent*, shall be fined by the king six hundred *panas*.

HE, who wishes to rescind the contract, (who wishes it annulled; who repents of it;) may give back *the price, or the commodity*, to the other; *that is*, may return it. The buyer may give it back to the seller; or the seller may take it back from the buyer. This regards grain to be sown and things which are not perishable, as a house, land, a car and the like, excepting iron, beasts of burden and the rest.

The *Retnácara*.

FOR the time allowed for the trial and examination of iron and the rest, is limited by particular texts (VI &c.); and in some instances, it is limited to three days. A period of ten days is allowed for rescinding the purchase of a house or of land; from *the* parity *of the case*, the same should be allowed for the rescission of sale: and it is equitable, that the period should be limited to three days for the rescission of sale in the case of iron or the like, as directed *for the rescission of purchase* (VI).

HE, who has bought or sold any article in *this* world, that has a fixed price and is not perishable, as land, or copper, or the like, and repents of the contract, thinking it ill made, may return the goods within ten days, or may take back the thing sold.

CULLU'CABHATTA.

THIS text may relate to things purchased without examination; for it seems to be so established in the section on rescission of purchase: it may also be understood of a sale made by mistake.

* The first verse has been already cited (VII).

But other lawyers maintain, that this text, and what is ſuggeſted by the text of YA'JNYAWALCYA (VII), may alſo relate to a thing bought after examination. It is the buyer's own fault if he examine not the commodity. But *the rule, that under certain circumſtances* a thing cannot be returned to the ſeller, takes effect after ten days and ſo forth. Yet, even in that caſe, it ſhould have been inſpected and approved (XI), to obviate *the riſk of* concealed blemiſhes. However, under the rule regarding commodities inſpected and approved (XI), if an agreement be formally made to this effect, "this is approved by me; even though blemiſhed, it ſhall not be returned;" ſuch a commodity can on no account be returned. This is intended, and the text of MENU (XXIII) ſuppoſes ſuch an agreement.

"SIX hundred" (XXIII 2); ſix hundred *panas*.

CULLU'CABHATTA and CHANDE'SWARA.

"THE giver or the taker," the buyer giving it back, or the ſeller taking it back. According to the *Retnácara* and the reſt, this text ſhould properly be reſtricted to things bought without examination.

XXIV.

MENU:—By this law, in all buſineſs whatever here below, muſt the judge confine, within the path of rectitude, a perſon inclined to reſcind his contract of ſale and purchaſe.

"ALL buſineſs whatever;" by this expreſſion, the law concerning reſciſſion of purchaſe and ſale is extended to other worldly affairs. Conſequently, there is no offence in reſcinding, within ten days, a contract for a loan, for an aſſociation, or for ſervice, or a promiſe of wages, or the like. But, after that period, thoſe promiſes may not be broken; *or if they be retracted*, a fine of ſix hundred *panas* muſt be paid to the king. This is conſiſtent with the opinions of CHANDE'SWARA and CULLU'CABHATTA; but a fine may be inferred without a particular rule.

"BY this law" (XXIV); by the law declared under the head of reſciſſion of ſale.

XXV.

XXV.

CA'TYA'YANA:—HE, who accepts not a thing which he has bought and secured, and he, who delivers not, free from blemish, *a thing which he has sold*, shall *each* take back his own property, forfeiting a tenth part of the price.

"SECURED;" *literally* received: brought into his power.

The *Retnácara* and *Chintámeni*.

"EACH shall take back his own property;" the buyer shall take back the price; and the seller shall take back the commodity: for, under the authority of the text, the right of property has not been transferred in this case. But the sage propounds a distinction in regard to a thing of which possession has not been taken.

XXVI.

CA'TYA'YANA:—YET, if the thing were not secured, though a formal contract were made, and the purchaser accept it not, the same rule *for rescission within ten days*, prevails; but, after ten days, the contract may not be rescinded.

"A FORMAL contract;" an attested writing or the like. Although such a contract be made, if possession of the commodity have not been secured, the purchaser does not forfeit a tenth part *of the price*, on returning it within ten days; but, after that period, a thing, of which the blemish was known, cannot be returned.

The *Chintámeni*.

THE meaning is, that, if a mere agreement for purchase were made, and the goods be not accepted, there is no penalty of a tenth part *of the price*; but, after the limited time, nothing can be returned, even though a mere agreement had been made. As for returning a blemished commodity, even after the limited time, that is restricted to the case of a concealed blemish; it is not permitted, if the blemish were disclosed at the time of the sale.

XXVII.

XXVII.

NA'REDA:—SHOULD the thing ſold be injured, or burned, or carried away, *after the time, when it ought to have been delivered*, the loſs ſhall fall on the vender, who delivered it not, when he ought.

"WHO delivered it not, when he ought;" who, without reſcinding the contract, tendered it not, even though a demand were not *formally* made: *in this caſe, the loſs falls on the vender*, unleſs the commodity be injured by the act of GOD or of the king. But, after a demand, the loſs falls on the vender, even though the injury happen by the act of GOD or of the king; and he muſt make it good to the purchaſer.

XXVIII.

YA'JNYAWALCYA:—SHOULD a commodity ſold, but not delivered on demand *with tender of payment*, be injured by the act of GOD or of the king, the loſs ſhall fall on the vender.

AGAIN, if the vender, without reſcinding the contract, deliver not the commodity, though demanded by the purchaſer, and it be injured by the act of GOD or of the king, that loſs falls on the vender; therefore another unblemiſhed commodity, ſimilar to that which has been damaged, muſt be delivered to the buyer. The *Mitácſharà*.

IT appears from the mention of a demand, in the text of YA'JNYAWALCYA, that the vender ſhall not be compelled to make it good, if a thing undemanded be injured by the act of GOD or of the king. As a demand is not ſpecified in the text of NA'REDA (XXVII), it ſhould ſeem, that the vender muſt make good *the value of* the thing, though *it had not been* demanded, if it be injured by his own negligence, without the act of GOD or of the king; but the vender ſhall not be compelled to make it good, if deſtroyed by the effect of time, before it be demanded.

YET, if a buyer, repenting of his purchaſe, accept not the thing, and it be afterwards deſtroyed by the act of GOD or of the king, the loſs falls on him.

XXIX.

XXIX.

YA'JNYAWALCYA:—IF the firſt vendee refuſe to receive the thing ſold, it may be ſold to another; and, if a loſs ariſe by the fault of the vendee, on him alone ſhall it fall.

SHOULD the firſt buyer, repenting of his purchaſe, refuſe to receive the commodity; it may be ſold to any other purchaſer, who may offer. The firſt hemiſtich is thus expounded in the *Mitacſhara*.

HERE no reference to the time limited for reſciſſion of purchaſe is hinted by the ſage or commentator: and according to the *Mitácſharà*, the laſt hemiſtich eſtabliſhes, that the loſs falls on the vendee, if no other purchaſer offer for that thing, and it be deſtroyed by the act of GOD or of the king; for the loſs happens through the fault of the purchaſer in refuſing to receive the commodity.

XXX.

NA'REDA:—HE, who having ſhown *a ſpecimen of* property free from blemiſh, delivers blemiſhed property, ſhall be made to pay double the price *to the vendee*, and a fine to the ſame amount.

BY directing, that double the price ſhall be paid, if blemiſhed property be ſold, after ſhowing unblemiſhed goods to determine the price, the neceſſity of delivering the blemiſhed property is denied. But the ſage has not declared, that the unblemiſhed thing, which was ſhown, ſhall be delivered.

XXXI.

VRÍHASPATI:—THE diſhoneſt man, who ſells a commodity, knowing its blemiſh, *but not diſcloſing it*, ſhall pay double the price of it *to the vendee*, and a fine of equal amount *to the king*.

"THE price of it," the word "it" bearing an apparent alluſion to what

his preceded, and "sells" signifying 'gives after receiving a price,' the allusion is to the price proposed for NA'REDA has stated it in a single phrase; and the word price, in his text (XXX), signifies the stipulated *consideration*, and cannot be applied in a secondary sense to *the value of* the commodity *delivered* Or it may be thus explained, since the text of NA'REDA directs payment of double the price, if blemished property be sold after showing unblemished goods, twice the value of the commodity must be paid, if blemished property be shown and delivered without disclosing the blemish, for in the text of VRIHASPATI the word "it," being referred to the principal subject, alludes to the commodity, which was originally proposed for sale.

"WHO sells a commodity (XXXI)," who sells it without disclosing the blemish. The *Retnacara.*

XXXII

YA'JNYAWALCYA:—IF a man sell to one what had been *already* sold *by him* to another, or a blemished commodity as unblemished, the fine shall be double the price of the thing.

AGAIN, he, who sells to one a thing already sold to another, or vends a blemished commodity, of which he conceals the blemish, shall be fined in double the price of that commodity. This is implied by the interpretation first stated in the exposition of the first hemistich, as delivered in the *Mitacsharà.*

XXXIII

NA'REDA:—HE, who sells a commodity to one man, and delivers it to another *unauthorized to receive it*, shall also pay double the price, and a fine to the same amount.

AFTER agreeing for the price of that thing with one man, if a man afterwards relinquish it to another, he also shall be compelled to pay double the value and a fine to the same amount.

The *Retnácara*

IN

In this caſe the firſt contract ſhall prevail (Book II, Chap. II, v. XXVIII). To whom ſhall twice the value be paid? To him, who does not obtain the chattel purchaſed. This ſhould be underſtood as the ſenſe of the text, becauſe no perſon is ſpecified.

Here a difference occurs in the *Retnácara* and *Mitácſhará*; one ſtating the penalty at double the value of the thing; the other, at double its price. It may be reconciled by ſuppoſing the price and the value of the thing to be the ſame.

XXXIV.

Na'reda:—But, if a vendee refuſe to accept the commodity which he has bought, when it is offered, the vender commits no offence, if he ſell it to another.

XXXV.

Ya'jnyawalcya, cited in the *Retnácara* and *Chintámeni*:—He ſhall be compelled to repay two fold a ſum received as earneſt.

What is voluntarily delivered to the ſeller, by the purchaſer, for the purpoſe of ratifying the bargain, is meant by the word "earneſt:" and the vender muſt pay twice the amount, if he afterwards cancel the ſale.

The *Retnácara*.

Here it is not directed, that twice the value of the thing ſhall be recovered; but twice the amount depoſited to complete the bargain. This is the full purport of the text.

XXXVI.

Vya'sa:—By him, who has given earneſt, and appointed no ſpecifick time for delivery, it ſhall be forfeited, if he refuſe to accept the commodity when offered.

The amount, which the vendee has given as earneſt on account of the purchaſe,

chaſe, is forfeited to the vender, if the buyer refuſe to receive the commodity when tendered. Therefore that amount ſhall not be recovered by the purchaſer from the vender. The *Retnácara.*

In this caſe it appears, that forfeiture of the amount paid as earneſt is the only penalty *impoſed* on the vendee. But the text of Ya'jnyawalcya (XXXV) being thus expounded in the *Chintámeni*; "what is given by the vendee, and received by the vender promiſing to ſell his own vendible property, is received as earneſt, and twice its amount ſhall be paid to the purchaſer by the vender repenting of the ſale;" what is depoſited to complete the bargain, is denoted by the word earneſt.

This text (XXXV) is placed by Ya'jnyawalcya himſelf under the title of loans and payment, and is expounded by Vijnya'ne'swara, as relating to pledges. *

XXXVII.

Vrihaspati:—What has been ſold, at a low price, by a man inebriated or inſane, or through fear, or by one not his own maſter, or by an idiot, ſhall be given back, or may be taken *forcibly* from the buyer.

"Shall be given back *by the purchaſer of it*;" the text ſhould be thus ſupplied. "At a low price;" this is connected with all the terms of the ſentence: thus the meaning is, "what has been ſold, at a low price, by a man inebriated or the like." Conſequently, *if it be* ſold for a fair price by a man inebriated, *the ſale* is valid; and *if it be* ſold at a low price by a man ſound of mind, *the ſale* is *alſo* valid. Thus ſome explain the law: but that induction is wrong; for even the ſale of a thing, which ought not to be ſold, might be valid, *though made* by a man intoxicated. Therefore the full ſenſe is, that a ſale made by miſtake, for a low price, is void: and in this caſe, as ſixteen void gifts are declared under the title of ſubtraction of what has been given, ſo, from parity of reaſoning, there may be ſixteen void ſales. Thus others expound the law.

* Book I, ſ CXXIV.

XXXVIII.

NA'REDA:—THE purchaſe and ſale of all commodities by merchants are made with a view to gain; and that gain ariſes from the receipt of the price, be it great or ſmall:

2. Therefore, *when a price has not been ſtipulated*, let ſome merchant, who knows the prices of commodities, fix it according to place and time; let him not act crookedly: the ſtraight path is the beſt in all mercantile buſineſs.

IF a thing be ſold without ſtipulating its price, let a merchant determine it according to time and place, and fix a proper value: let him not act crookedly, or fraudulently; let him not deviate from propriety in regard to the price.

CHANDE'SWARA.

XXXIX.

YA'JNYAWALCYA:—HE, who falſifies ſcales, market rates, meaſures, or ſtandard coins, and he, who uſes them, ſhall both be forced to pay the higheſt amercement.

"SCALES," or balance; the ſcales and beam. "Market rates" (literally commands); the king's written precept *regulating market rates*. "Meaſures;" as a *praſt'ha*, a *dróńa*, and the like. "Coins;" money ſtamped; as a *dharma*, a *niſhca*, or the like. Both he, who falſifies theſe, (who makes them different from the general ſtandard of the country, whether leſs or more, or ſtamps money, ſuch as a *dharma* and the like, in an unuſual manner, or alloys it with copper or other *baſe metal*,) and he, who uſes them, knowing them to be falſe, ſhall each be fined in the higheſt amercement.

VIJNYA'NE'SWARA.

THE ſage propounds a law concerning the trial and examination of coins.

XL.

YA'JNYAWALCYA:—THAT examiner of coins, who declares bad

bad money good, or good money bad, ſhall be compelled to pay the higheſt amercement.

He again, who, on examining coins, declares a coin to be good, which is *over* alloyed with copper or the like, or who declares a true coin to be falſe, ſhall be fined in the higheſt amercement.

The *Mitacſhará*.

A similar fine might be impoſed on thoſe, who declare true weights or meaſures to be falſe, but it is not directed in this caſe, becauſe their offence is leſs than that of an examiner of coins, by reaſon of the groſſneſs of weights and meaſures compared with coins.

XLI.

Ya'jnyawalcya:—But he, who cheats in weights or meaſures to the amount of an eighth part, ſhall be forced to pay a fine of two hundred *paṅ'as;* and proportionably if *the fraud be* greater or leſs.

He again, who defrauds *another*, by falſe weight or meaſure, to the amount of an eighth part of the vendible property, whether it be grain in the huſk, cotton, or the like, ſhall be fined in two hundred *paṅ'as*, and if the amount of the fraud be more or leſs, the fine alſo ſhall be proportionably more or leſs.

The *Mitacſhará*.

In this caſe, if the fraud be leſs than an eighth part, the amercement ſhall be leſs, if the fraud be greater, the amercement ſhall be higher Thus ſome expound the law.

XLII.

Ya'jnyawalcya:—A man, who adulterates vendible property, ſuch as drugs, oil, ſalt, perfumes, grain, ſugar, or the like, ſhall be compelled to pay ſixteen *paṅ'as*.

"Drugs," medicinal ſubſtances. "Oil," *comprehending* clarified butter

ter and the like. "Perfumes," as *uſira*, or the root of *virana* graſs,* and the like. The expreſſion, "or the like," comprehends aſafœtida, pepper, and other things. The fine for mingling inferiour ſubſtances with theſe, for the purpoſe of ſale is ſixteen *paṇas*.

XLIII

YA'JNYAWALCYA.—THE fine for diſguiſing the nature of earth, leather, beads, thread, iron, wood, bark, and cloth, is eight times the amount of the ſale.

GIVING to earth and the reſt, for the purpoſe of ſale, the *appearance of* a *thing of a* precious nature, which it *really* is not, or making it to reſemble a thing of a valuable nature, by the addition of a different odour, colour, or juice For inſtance, counterfeiting fragrant *amalacá*† by adding the odour of the flower *mellica*‡ to a piece of earth, or the ſkin of a tiger by colouring the ſkin of a cat, or a ruby, by tinging a glaſs bead with another hue, or ſilken thread, by *giving* a gloſſy appearance to cotton thread, or *ſilver*, by poliſhing black iron, or ſanders wood, by adding the odour of that to the wood of the *bilwa*‖, or paſſing the *thorny* bark of the *caccola*§ for cloves, or counterfeiting wove ſilk by raiſing a gloſſy appearance on cotton cloth, *in ſuch caſes*, the fine is eight times the value of the commodity, whether earth, leather, or the like, made to reſemble *another thing* and ſold *in its ſtead*.

The *Mitácſhará*.

OTHERS hold, that the fine is eight times the value of the fragrant *amalaca*, which it was called when ſold, and which was expected by the purchaſer.

XLIV.

YA'JNYAWALCYA.—THE fine alſo for one, who delivers, in pledge or ſale, a thing changed under ſeal, or a fictitious valuable, is thus regulated,

2. For a thing worth leſs than a *pana*, *the fine is* fifty *paṇas*,

* Aromatick Andropogon † Phyllanthus emblica ‡ Nyathanthes undulata. ‖ Crateæva marmelos.
§ The *Badará* vulgarly called *Beer*, a plant of the genus Rhamnus

for

for one *paṅa*, a hundred; for two *paṅas*, two hundred; for a greater value, a higher amercement.

"UNDER ſeal," what has the cover of a ſeal *or the like*, *as* a caſket. "A thing changed;" of him who fraudulently ſubſtitutes, by ſlight of hand, a caſket full of beads, for another caſket, which he ſhowed full of pearls, and of him, who delivers, in ſale or pawn, a fictitious valuable, as *counterfeited* muſk or the like, "the fine is thus regulated." *or it* will be *now* delivered; *or it* ſhould be *thus* underſtood. If the price of the fictitious muſk, or the like, be leſs than one *paṅa*, the penalty for ſelling that fictitious article is fifty *paṅas*; if the price be one *paṅa*, a hundred *paṅas*; if the price be two *paṅas*, two hundred *paṅas*: in like manner, if the price be greater, a higher fine ſhould be inferred. VIJNYA'NE'SWARA.

OTHERS deem it proper to determine the fine, in a caſe of *fraudulent* ſale, according to the number of *paṅas* in the price received; and, in the caſe of a *fraudulent* pledge, according to the number of *paṅas* in the value of the commodity, under the name of which the thing was delivered. Hence, although the fine be very heavy, it muſt be borne, becauſe it is directed by the text.

XLV.

YA'JNYAWALCYA:—THE higheſt amercement *is directed* for *traders* combining to maintain the price againſt labourers and artiſans, *although* acquainted with the riſe or fall of the price.

IF traders, knowing an increaſe or decreaſe in the market rates as regulated by the king, conſpire, through avarice, to maintain the *former* price againſt labourers, as waſhermen or the like; and againſt artiſans, as painters and the reſt; they ſhall be fined one thouſand *paṅas*.

The *Mitácſará*.

OTHERS hold, that if labourers, artiſans, and traders, knowing the riſe or fall of the market rates, maintain the price, (that is, keep up the former rates,) they ſhall be fined.

XLVI.

XLVI.

YA'JNYAWALCYA':—THE fine on traders, who combine to obtain or to vend goods at wrong prices, is fixed at the higheſt amercement.

FOR thoſe merchants again, who combine and ſtop foreign commodities, which they want at a wrong price below the market rate, or who ſell goods at prices exceeding the market rate, the fine, ordained by MENU and others, is the higheſt amercement.

The *Mitácſhará.*

THE meaning, which reſults therefrom, is, that a fine is directed for the offence of raiſing or leſſening the market rates fixed by the king. The ſage declares, that purchaſe and ſale ſhould be conducted according to the prices regulated by the ſovereign.

LXVII.

YA'JNYAWALCYA':—PURCHASE or ſale ſhould be daily conducted according to the *market* prices, which are fixed by kings; the difference thereof is the legal profit of traders.

IF the king be near, according to that price, which is fixed or regulated by him, ſhould daily purchaſe or ſale be conducted. The difference, or remainder, of thoſe prices regulated by the king, is the only profit of traders; for they may not alter the rates at their own choice.

The *Mitácſhará.*

"IF the king be near;" but, if he be not near, the market prices ſhould be regulated by his officers, and ſhould be reported to him: elſe there may be apprehenſion of wicked practices. On this account, the word king is uſed in the plural; it has here a ſecondary ſenſe, as in the expreſſion, "the king moves;" *meaning him and his retinue.*

DISTINCT prices ſhould be fixed for purchaſe and ſale, according to the abundance or paucity of purchaſers.

XLVIII.

MENU: — ONCE in five nights, or at the close of every half month, or of every month, *according to the nature of the commodities*, let the king make a regulation for market prices in the presence of those *experienced men*.

ONCE in five nights, or at the close of every fortnight, or of every month, according to the variableness, even tenour, or great uniformity of the price. In like manner, other occasions *for frequent or rare changes* may be also understood. The term "king" is here used generally; intending also the king's officers.

XLIX.

YA'JNYAWALCYA declares the mode of regulating market prices: — ON commodities of the same country, a trader, who buys and sells again immediately, may receive five in the hundred; but on those of other countries, ten in the hundred.

HE, who sells a commodity, which he obtained in the same country, may take a profit of five in the hundred (that is, five *paṅas* in one hundred *paṅas*); and, if the commodity were obtained in another country, he may take a profit of ten *paṅas* on the value of one hundred *paṅas*; *that is*, if an opportunity of sale occur on the same day, on which the commodity was received. But to him again, who sells the commodity at a subsequent time, a greater profit must be allowed, because a greater time elapses. The market prices of various commodities should be so regulated by the king, in his own dominions, that there may be a profit of five *paṅas* in a hundred, on the regulated prices.

The *Mitácshará*.

IN this instance another, or a foreign, country should not be assumed, from the description *quoted in a former chapter*; "where language differs, or a mountain intervenes &c;" * for that is barred by the condition mentioned,

* Book II, Chapter III, ↓ XXVI.

"who

"who buys and sells immediately." But a greater profit may be determined from a man's own judgment, at the distance of a *Yójana* or the like from the market where the purchase was made, according to the difference of charges. Such is the meaning *of the text.*

WHAT price may be taken by him, who buys from a man to sell again, is determined, after regulating the market prices for the purchase of commodities bought *for consumption.*

L.

YA'JNYAWALCYA:—ADDING the incidental charges to *the first cost of* the commodity, let a price be fixed, which shall be equitable both to the buyer and the seller.

So much as is the amount of charges incident to the fabrication or purchase of the commodity; adding that, and the king's taxes, and the charges of subsistence, of boat hire and the like, let a price be fixed: and in that case, if the seller happen to pay all the *estimated* charges, the buyer could obtain no *subsequent* profit; or if the buyer kept all the *computed* profit, the seller ought not to be liable for any *previous* charges: therefore the price should not be so regulated; but equitably both for the buyer and seller, to obviate excessive loss. Such is the sense; and VIJNYA'NE'SWARA so expounds this text; but it is cited by him with a remark, that "the sage declares the "mode of regulating the price of a foreign commodity." Yet in fact it is only an example of the mode of regulating market prices; *the regulation* should be formed on a man's own judgment. Sometimes, from the price happening to rise, the profit is five hundred *panas* on a hundred; sometimes a man may even lose his capital: for the ruler *of events* governs *the fluctuations of* price. Consequently, the market rates should be fixed according to the prices of several countries, according to time, to *charges of safe* custody and the like.

LI.

NA'REDA:—THE value of apparel once washed is diminished an eighth part; twice *washed*, a fourth; thrice *washed*, a third; and four times washed, a half: 2. At-

2. AFTERWARDS a deduction of a quarter, from the half reduced value, is ſucceſſively made, until the fringe be waſted, and the cloth tattered; *but* for tattered cloth there is no regulated deduction.

HERE it ſhould be obſerved, that barter is in fact a ſale; and the ſame rules ſhould be admitted, in the forms of judicial procedure, *for barter* and for ſale: elſe the rules concerning it are no where delivered. But there is ſome diſtinction in law: delivery, after receiving a conſideration any how ſettled by way of price, is ſale; delivery, after receiving a conſideration ſettled by way of equivalent, is barter. The equivalent ſhould be of the ſame nature; and both things, to be bartered, ſhould be equal in quantity; or, if one be double of the other, or the like, they ſhould be equal in pecuniary value: or more or leſs *under other circumſtances*, at the option of the parties. Thus, in an exchange of *tila* or ſimilar grain, for peas or pulſe, the equal value, not the ſimilar nature, is required: namely, ſuch value as would ariſe from the ſale of the article; for inſtance, from exchanging *tila* or other grain, for ſhells, *paṇas* of copper, ſilver coins, or the like. More may be determined by the mere exertion of a man's own intellect. *The law has been* thus concifely *propounded.*

CHAPTER

CHAPTER IV.

ON THE OWNERS OF CATTLE AND THEIR HERDSMEN.

SECTION I.

ON THE WAGES OF HERDSMEN, AND ON LOSSES OF CATTLE.

HAVING propounded certain engagements, ſuggeſted by the obligations of maſter and ſervant, MENU declares the law concerning diſputes *ariſing from the fault* of a particular ſervant, *namely* the herdſman.

I.

MENU:—I NOW will decide exactly, according to the principles of law, the conteſts uſually ariſing from the fault of ſuch as own herds of cattle, and of ſuch as are hired to keep them.

"CATTLE," which become the ſubject of diſpute.

The *Retnacara.*

OTHERS explain the text, "I will decide exactly the conteſts between "owners of cattle and *their* herdſmen"

To determine ſuits concerning wages, the ſage declares the rule for them.

II.

MENU:—THAT hired ſervant, whoſe wages are paid with

 milk,

milk, may, with the assent of the owner, milk the best cow out of ten: such are the wages of hired herdsmen.

"Whose wages are paid in milk," hired for a recompense so paid, one whose wages are milk alone. He shall milk whichever is the best among ten cows. This milking of one cow *in ten* constitutes the wages of a herdsman hired for *an allowance of* food, clothes and the like

The *Retnacara.*

In the *Chintament* a similar exposition is given, and it is added, in the *Menwarthamuctavali*, that the herdsman must keep ten cows, for the milk of one, which is allowed him, and he must also milk them But others explain "hired" (in the latter part of the text) a servant. It follows therefore, that an attendant on cattle also is a servant, and the text coincides with that of Vrĭhaspati (Chapter I).

III.

Na'reda:—For a hundred head of cattle, the annual wages of the herdsman are a heifer three years old, for two hundred, a milch cow, and the milk of the whole herd every eighth day.

"For a hundred head of cattle," *kept by him;* and so for two hundred. *The term employed in the text signifies* a heifer three years old "The milk of the whole herd," the milking of all the milch cows.

The *Retnácara.*

IV.

Vrĭhaspati:—*A servant,* hired for *attendance on* the milch cattle of another, shall receive the whole milk every eighth day.

Here is an optional alternative; the milk of one cow out of ten, or the milk of all the cows every eighth day, *allowed* as wages. But Na'reda has further mentioned a heifer three years old. Neither is this a third case,

for

for it cannot alone ſuffice for wages. Nor ſhould it be affirmed, that the milk of the whole herd every eighth day, the milk of one cow out of ten every day, and a heifer *year by year* form the very ſame caſe; for there is no mutual reference between the *texts of theſe* ſages. The milk of one beſt cow, in ten, is equal to the milk of all the cows, good and bad, at the end of every eighth day, or on every ninth day. In the caſe propounded by NA'REDA, ſince ſome of the hundred cows afford no milk, a heifer three years old is allowed as wages for attending ſuch cattle. Thus others *explain the law*. From the ſpecial mention of one, whoſe wages are paid with milk, another form is to be underſtood for the wages of one, who is paid in money; and that is propounded in the chapter on the non-payment of wages and hire.

NA'REDA declares what ſhould be done by a herdſman.

V.

NA'REDA:—LET the owner each day *commit his cattle to* the charge of the herdſman, as ſoon as night ends; and in the evening, let the herdſman reſtore them *to their owner*, having ſeen them well ſatisfied with graſs and with water.

"COMMIT his cattle" to be kept *by the herdſman*. "Reſtore them after having ſeen them well ſatisfied with graſs and with water;" reſtore them after they have eaten graſs and drunk water. "In the evening," let the herdſman reſtore them; let him deliver them to their owner, when little of the day remains.

The *Retnácara*.

THE *Chintámeni* furniſhes the ſame explanation. The meaning is, that the cows are intruſted to the herdſman for paſture and water only.

VI.

YA'JNYAWALCYA: — LET the herdſman reſtore the cattle each evening, in the ſame condition in which he receiv-

ed

ed them: for ſuch, as have been ſeized or killed through his negligence, he ſhall pay, if he had made an agreement for wages.

" THROUGH his negligence:" *if* cattle *be* ſeized or killed, through his own fault, the herdſman ſhall be compelled to make good *the loſs* to the owner, if he had made an agreement for wages, that is, if wages had been ſtipulated. So the *Mitácſhara* and the very ſame *expoſition is delivered* in the *Retnácara*.

BY this condition (" if he had made an agreement for wages") it is intimated, that he, who attends cattle without wages, ſhall not be compelled to make good the loſs But to him, who attends cattle as a favour, even the favour *conferred by him* is his hire and he, who, even without wages, makes a promiſe in this form, " I muſt inevitably reſtore the cattle," ſhall alſo be compelled to make good the loſs Such ſhould be the deciſion.

VII

MENU and NA'REDA'— BUT he ſhall not be compelled to make it good, when robbers have carried it away notwithſtanding his exertions, provided he give notice to his maſter in a *proper* place and ſeaſon.

" IN place and ſeaſon" proper for ſuch notice.

The *Retnacara* and *Chintament*

IN fact the ſenſe is this, not neglecting the proper place and ſeaſon, if he give immediate notice to his maſter. CULLUCABHATTA *gives* the very ſame *expoſition*

VIII

VYASA'— THE herdſman is not chargeable, if he be made captive, if the village be overpowered, or if the diſtrict be thrown into confuſion, and any of the cattle be ſeized or deſtroyed.

" IF

" If he be made captive;" if he be feized and detained, and ſo forth.
The *Retnácara.*

In fact, if the loſs or injury happen through want of care on the part of the appointed herdſman, though he were able *to defend the cattle*, blame is imputable to him; but not, if he were unable *to defend the herd.*

IX.

MENU: — By day the blame falls on the herdſman; by night on the owner, *if the cattle be fed and kept* in his own houſe; but, if the place of their food and cuſtody be different, the keeper incurs the blame.*

By day, if any fault occur in regard to the food and cuſtody of cattle ced in the hands of the herdſman, the blame falls on him; by night, that happen to cattle reſtored by the herdſman and ſtanding in the ner's houſe, it is the owner's fault; but otherwiſe (if they remain even ight in the herdſman's charge), ſhould any fault occur, the herdſman urs cenſure. So CULLU'CABHATTA. In the *Retnácara* the ſame *expo-m is given.*

GREATER wages ſhould be ſtipulated for the herdſman, when the agreent is for attendance by day and night. The expreſſion, " the blame ls on the owner," is intended to denote, that the herdſman ſhall not be npelled to make good the loſs; *that* the fine *muſt be paid by the owner*, if in be damaged and the like; and *that he muſt perform* penance, if the tle die, and ſo forth.

VRĬHASPATI declares the mode in which a herdſman ſhould defend *tle.*

X.

RĬHASPATI: —LET the herdſman preſerve the cattle from

* In Book I, an anonymous text is quoted, which differs from this in the Laſt hemiſtich; " but, if ither have the care of them at night alſo, the owner ſhares no blame."

 danger

danger of infects and reptiles, of robbers and tigers, and from falling into caverns or pits, let him defend them to the utmoft of his power; let him call aloud for help, or give notice to his maſter.

Let him guard them from caverns or dens, and from pits or cavities. Let him preſerve them, to the utmoſt of his power, from danger of inſects or reptiles and the like "Let him call aloud for help," that is, let him make others hear *his cries*. The *Retnacara*.

"Let him defend them," let him reſcue them. If the cattle be in imminent danger from a tiger or the like, let him call people to aſſiſt in protecting them, or if that be impoſſible, let him inſtantly give notice to his maſter, that he may endeavour to ſave them. Thus others interpret the text.

XI.

NA'REDA:—If a cow be in danger, let the herdſman defend her to the utmoſt of his power; but if he be unable to *protect her*, let him haſten and give notice to his maſter.

2. A HERDSMAN, who preſerves not a cow from accidents, who gives no alarm and informs not his maſter, when ſhe is in danger, ſhall pay the value of her *to her owner*, and a fine to the king.

"DANGER," diſtreſs. "Let him defend her," or in the caſe of his inability, let him call aloud *for help*. "Shall pay the value of her" (XI 2), literally bear *the loſs* he ſhall pay for that cow. The *Retnácara*.

Cow is mentioned generally, comprehending other ſorts of cattle.

XII.

MENU and NA'REDA:—THE herdſman himſelf ſhall make good

good the loſs of a beaſt, which, through his want of due care, has ſtrayed, has been deſtroyed by reptiles, or killed by dogs, or has died by falling into a pit.

"HAS ſtrayed;" or has been ſeized, or "deſtroyed." By whom *deſtroyed?* The conſtruction of the ſentence anſwers that queſtion; "by reptiles." "Taken by himſelf," *(for* CHANDE'SWARA *reads* swahatam, *which is explained, taken by himſelf, inſtead of* ś'wahatam, *killed by dogs;* this alſo comprehends ſeized by another. "Has died by falling into a pit;" or has died on a mountain of difficult acceſs, or the like. "Through his want of due care;" of the care, which ſhould be uſed by a herdſman.

The *Retnácara.*

THE cattle is loſt through want of the care due from the herdſman; hence the blame, imputable to that herdſman, is a cauſe for his making good the loſs.

The *Chintámeni.*

"STRAYED;" paſſed out of ſight. Has been "deſtroyed by reptiles, or killed or bitten by dogs, or has died by falling into a pit or *the like.*" and theſe are *only* examples; if a cow or other beaſt die, or ſtray, through want of ſuch manly exertion for its preſervation, as is due from the herdſman, he muſt make it good to the owner.

CULLU'CABHATTA.

ACCORDING to him, the reading is *ś'wahatam* with a palatal Ś; but according to the *Retnácara*, it is read with the *dental S.*

XIII.

YA'JNYAWALCYA:—ON *the* loſs *of a beaſt* by the [illegible] herdſman, the fine ordained *for him* is [illegible] and a half; and *he ſhall pay the* value *of the* owner.

ON the loſs of a beaſt by the fault of the herdſ[illegible]

pay a fine of thirteen *paṇas* and a half, and *make good* the property loſt, to the owner; that is, the value of the beaſt as determined by arbitrators. The verſe is *intended* to regulate the amount of the fine; the reſt had been already propounded.

The *Mitáeſhará.*

"THE verſe;" this text (XIII). "The reſt," (the payment of the value to the owner,) already propounded (VI), is thus repeated. Such is the meaning *of the gloſs.*

HERE "the property loſt" ſignifies its price.

The *Retnácara.*

AND thus, whenever it is declared in this chapter, that property muſt be made good, its price is intended; for the property *itſelf* is *loſt* or deſtroyed. VISHNU expreſſly mentions the price.

XIV.

VISHNU:—BY day, if cattle be in danger from venom or fire, and the herdſman go not *to their aſſiſtance*, he ſhall pay, to their owner, the price of cattle *thus* deſtroyed by his fault; and, if he milk them without permiſſion, he ſhall be fined twenty-five *cárſhápanas.*

"Go not;" if he do not go to protect them. "*Cárſhápana*" will be explained.

The *Retnácara.*

MEANING, that it will be explained in the chapter on meaſures.

BUT others remark, that the expreſſion, "by day," denotes the time, whatever it be, during which the cattle are intruſted to the herdſman for *cuſtody.* "If he go not," though able; meaning his *not defending* the cattle, through negligence, indolence, knavery, or the like. MENU *thus* explains a *cárſhápaṇa;* "A *carſha* (or eighty *raktikás*) of copper is called a

paṇa

paña or *cárſhápaña*" On which CULLU'CABHATTA thus comments; "the quantity of a *carſha* of copper is called a *carſhapaña*, and *is* alſo *called* a *paña*. *Now* a *carſha* is the weight of eighty ſeeds of the *gunja*: for "five ſeeds of the *gunja* are the firſt, *or forenſick*, *maſha*, ſixteen of theſe are an *acſha* or *carſha*, and four *carſhas* are one *pala*" *

XV.

Brahme purána —SHOULD a herdſman, having received his hire, leave his cattle in a deſolate foreſt, and go for his pleaſure to the village, he ſhall be chaſtiſed by the king, like a ſurgeon *or barber*, who *leaves his maſter in the town*, and goes for his pleaſure to the woodlands.

2. WHEN a cow, committed to the care of a herdſman, dies through his fault, he ſhall be compelled to make good the loſs, and pay a penalty to the lord of the land.

3. IF a cow die, by the violence of diſeaſe or the like, in the ſtall of its owner, *who took no pains to heal or relieve her*, that owner ſhall be fined, and ſhall pay the wages due to his herdſman.

"LEAVE his cattle," leave a cow, which has been ſeized with *any* diſtemper. "A ſurgeon," a phyſician *practiſing* on veins or the like. As he ſhould be chaſtiſed, if he leave his maſter on whom he ought to attend, and go for his pleaſure to the foreſt, ſo ſhould this man alſo *be chaſtiſed* Conſequently, a ſurgeon, who goes for his pleaſure to the woodlands, is an example mentioned for the ſake of illuſtration The word "*Sa ack* (ſurgeon)" is explained in the *Cámt'iment*, a barber. Others explain the term, a perſon armed with a javelin *(Sálaca)* or other weapon of offence he is mentioned incidentally

"PAY a penalty" (XV 2) thus, by conſent of many ſages, the value muſt be made good, if a cow die by the fault of the herdſman, according to

* AMERA'SI'NGHA, in the chapter on trades and huſbandmen In laſt verſe contains five *ra'ſi'cas*, in modern, ten

YA'JNYAWALCYA, a fine ſhall *alſo* be paid; and the forfeiture of the herdſman's wages is intimated in the *Brahme purána*. Such is the conciſe ſtatement *of the law*.

" IF a cow die by the violence of diſeaſe or the like" (XV 3): if ſhe be deſtroyed by ſickneſs or the like, in conſequence of her owner taking no pains to heal or relieve her, though able to give relief; in that caſe he ſhall be fined by the king, and be forced to pay the wages due to the herdſman.

The *Retnácara*.

HERE the fine to be paid by the owner of the cow muſt be that which is ſpecified under the ſupplementary or miſcellaneous title; for there is no perſon to ſue *the offender*: and in this caſe a taint of ſin is the conſequence of taking no care of the *diſeaſed* cow.

XVI.

MENU and NA'REDA:—A FLOCK of goats or of ſheep being attacked by wolves, and the keeper not going *to repel the attack*, he ſhall be reſponſible for every one of them, which a wolf ſhall violently kill;

2. But, if any one of them, while they graze together near a wood, and the ſhepherd keeps them in order, ſhall be ſuddenly killed by a wolf ſpringing on it, he ſhall not in that caſe be reſponſible.

UNDER the term, " a flock of goats or of ſheep," are comprehended *all* beaſts liable to attacks. " Being attacked;" being aſſailed. So the *Retnácara*. CULLU'CABHATTA *delivers* the very ſame *interpretation*.

" IF any one of them &c;" if a wolf, ſpringing unperceived out of ſome thicket, kill any one of thoſe goats or ſheep, which were intruſted to the ſhepherd and were grazing together in the foreſt, the ſhepherd does not in that caſe incur blame.

CULLU'CABHATTA.

BUT,

But, if the herdſman careleſsly paſture the cattle in a dangerous ſpot, although there be ſafe places for paſturage, blame is imputable to him; but not, in caſe of a caſual attack by a tiger.

XVII.

Na'reda.—By this rule ſhall a diſpute with the keeper of all ſorts of cattle be decided; and, if any cows die naturally, he ſhall be cleared by producing their tails and horns.

"By this rule &c.;" thus have been declared conteſts with keepers of all ſorts of cattle, even of horſes and the like.

The *Reináchara.*

Consequently, in a diſpute with a keeper of horſes, the very rule, which has been declared, muſt be applied *as in other caſes ſpecified.*

"By producing their tails and horns," let him prove their death *in any* mode whatever. The *Chintámani.*

Else there might be ſuſpicion of his having ſold them.

XVIII.

Menu:—When cattle die, let him carry to his maſter their ears, their hides, their tails, the ſkin below their navels, their tendons, and the liquor exuding from their foreheads: let him alſo point out their limbs.

"Their ears &c." under theſe are comprehended any tokens of the dead beaſt, not common *to, or perfectly ſimilar in, all animals.* "When cattle die," when they die at remote diſtances, "let him point out their limbs," their durable parts, as horns and the reſt. In ſome places, the text is read, "point out their horns or the like:" on that reading, other tokens, beſides thoſe generally carried as above mentioned, are comprehended under the term "or the like."

SECTION

SECTION II.

ON FINES FOR MISCHIEF DONE BY CATTLE.

XIX.

MENU:—ON all ſides of a village or ſmall town, let a ſpace be left for paſture, in breadth either four hundred cubits, or three caſts of a large ſtick; and thrice that ſpace round a city or conſiderable town.

"FOUR hundred cubits; *literally*, one hundred *dhanuſh* or poles:" four cubits make one *dhanuſh*. "A large ſtick, or ſtaff;" three caſts or throws of that. Near the village, on all ſides, a ſpace, exempted from the ſowing of grain and the like, ſhould be left for the paſture of cattle, in breadth either four hundred cubits, or three caſts of a ſtaff. Again; near a city or conſiderable town, it ſhould be made thrice as large.

CULLU'CABHATTA.

"STICK" (*ſamyá*); the pin of the yoke. Thrice as much ground, as that, when thrown, paſſes before it falls, is the ſpace to be left round a village. The *Retnácara*

Samyá is explained by AMERA, the pin of the yoke.* Here the diverſity of opinions ſhould not be imputed as a fault; for it will be fully explained, that the ſpace is not rigidly determined.

"*Round* a city;" *round a conſiderable town* reſembling a city.

The *Chintámeni*.

FOR a greater ſpace will be directed *to be left* round a city.

* AMERA [illegible]

XX.

YA'JNYAWALCYA:—By the choice of the inhabitants, in proportion to the *whole* land, or by the authority of the king, ſhould the *common* paſture for kine be *regulated*: *but* every where a twice-born man may take, as if it were his own, graſs *for his cattle*, fuel *for ſacrifice*, and flowers *for oblations*.

2. Let a ſpace be *left* between the village and the fields, in breadth four hundred cubits; let it be eight hundred cubits round a town, and ſixteen hundred round a city.

"By the choice of the inhabitants;" *literally*, of the village: in proportion to the *number of* perſons inhabiting the village. Or according to the ſmall or great quantity of land; or by the king's command; a ſpace of ground ſhould be left for the paſture of kine. Such is the ſenſe of the *firſt* part of the text.

The *Retnácara*.

Some good portion of land ſhould be appropriated to the paſturage of kine and the like. The *Mitácſharà*.

The ſecond part of the text (XX) is thus explained in the *Mitácſharà*; a twice-born man, in want of graſs or fuel, may any where take graſs for kine, wood for *the ſacrificial* fire, and flowers for *oblations to* deities, as if they were his own, without oppoſition: but *he can* only *take* fruits from an unencloſed ſpot; for it is *thus* recorded by Go'tama.

XXI.

GO'TAMA:—He may take, as his own, graſs and ſacrificial fuel for his cattle and fire, and the bloſſoms of creepers and of lofty trees *for oblations;* and their fruit, if they be unencloſed.

This ſuppoſes preoccupancy; for, ſhould a thing be unoccupied, property alſo veſts by occupancy in others beſides twice-born men, as is declared by the ſame authority.

XXII.

GO'TAMA:—*A man becomes* owner of wealth by purchaſe, partition, occupancy, hypothecation, and gain.

As for what is again ſaid in the following text.

XXIII.

GO'TAMA:—HE indeed, who ſeizes graſs without aſking *permiſſion of the owner*, or wood, or flowers, or fruits, ſhall ſuffer amputation of his hand.

THIS ſuppoſes ſome other than a twice-born man; or ſuppoſes no diſtreſs; or implies a purpoſe different from that of *feeding* cows and ſo forth. Thus, if graſs or the like, belonging to a ſtranger, be taken by a twice-born man, for his cows, his ſacrifice, or his fire, there is no offence; but there is, an obvious offence, if the graſs or the like were produced by *the labour of* a ſtranger.

OTHERS hold, that a *Bráhmana* may, without the king's permiſſion, take graſs or the like from any piece of ground belonging to the king and not *already* occupied by another *ſubject*; but any other, than a *Bráhmana*, can *only* take graſs and the reſt from a piece of ground or ſpot occupied by himſelf with the king's permiſſion. What is declared by GO'TAMA (XXII), is intended to eſtabliſh property by the occupancy of a thing not already occupied by another; or to determine the property in a caſe of theft.

THE other verſe (XX 2) is propounded to provide for the well being of cows and other cattle, ſtanding, lying, or moving.

The *Mitáckſharà*.

OTHERS think, the ſecond text (XX 2) is intended for an example of the ſpace *to be left*, as directed by the preceding verſe (XX 1).

BETWEEN the village and the fields, a ſpace, meaſuring four hundred cubits,

cubits, ſhould be *left* on all ſides, exempt from tillage; round a ſmall town *(carvaṭa)* the ſpace ſhould be eight hundred cubits in breadth; round a populous city, the interval ſhould be meaſured by ſixteen hundred cubits:

VIJNYA'NE'SWARA.

A *dhanuſh* is a pole of four cubits. A town *(carvaṭa)* is larger than a village, and leſs than a city.

VA'CHESPATI MISRA.

THE term is ſynonymous with large village or *mahágráma.*

THE following texts, cited in the *Ratnácara*, define a village, town and city.

XXIV.

Márcandéya puráṇa:—AN inhabited place, in the midſt of fields and meadow land, where men of the ſervile claſs moſtly dwell, and where agriculture thrives, is called *gráma* or village.

2. AN elevated ſpot, which has ſubſtantial buildings, and is ſurrounded on all ſides by a ditch, if it be half, or a quarter, of a *yójana* in length, and the eighth part *of a yójana* in breadth, is a city or *puṛa:*

3. It is beſt, if there be deep water on the eaſtern ſide of it; if it be inhabited by perſons of pure lineage alone; and if abject races be excluded. *Should the length be* half of that *deſcribed*, the *place is called* a town or *c'héṭa:* and *one*, leſs than that, is *called* a ſmall town or *carvaṭa.*

THAT inhabited place, where the ſervile claſs is numerous, and where many huſbandmen reſide, is named *gráma* or village, *and it is ſituated* in the midſt of fields and grazed land. Thus, on all ſides of the village, there ſhould be paſture; and round this again ſhould be the fields. The

reſidence

residence of priests, soldiers, merchants and the like, is best in cities and towns: and that is intimated in a preceding chapter (Chapter II, v. IV.)

A PLACE, abounding in lofty edifices surrounded with walls; itself encompassed by a ditch, and spreading over two *crósa*, or one *crósa* only, is called *pura*: and even that is a city *(nagara)*, for, in the dictionary of AMERA, *pur* (*the same with* pura) is mentioned as synonymous with *puri* and *nagari (or* nagara*)*.* It is best, if there be deep water on the east. Half of that *length, or* half a *crosa*, constitutes a town, or *c'heṭa;* and less than that, but greater than a village, is a small town or *carvaṭa.*

Is it not derogatory to YA'JNYAWALCYA, that he has not mentioned the space to be left round a town or *c'heṭa?* The objection is anticipated and answered in the *Retnácara*. It must be inferred, even though not mentioned, that the pasture ground for kine should be *regulated* in proportion to the abundance of cattle in the village or the like. Consequently, a space of four hundred cubits is only mentioned for the sake of illustration: the real meaning is, that pasture should be left for kine, in proportion to the *number of* inhabitants.

XXV.

MENU:—WITHIN that *pasture ground,* if cattle do any damage to grain in a field unenclosed with a hedge, the king, shall not punish the herdsman.

"WITHIN that;" within the pasture ground of the village.

The *Chintámeni.*

XXVI.

VISHNU:—No offence *is imputable to the herdsman,* if the cattle graze, for a short time, in an unenclosed field, near the road, the village, or the pasture ground.

"IF the cattle graze" is supplied *to explain the purport of the text.*

* Dictionary of AMERA, chapter on cities.

Should

Should a field, which is ſituated near the road, the village, or the ſpace left for paſture, and which is unfenced, be grazed by cows or the like for a ſhort time, there is no offence on the part of the herdſman: but if they graze there long, blame is imputed to him; for it is conſidered as ariſing from his fault. The *Chintámeńi.*

THE very ſame *expoſition is found* in the *Retnácara.*

XXVII.

NA'REDA:—THE herdſman is not anſwerable for damage done in a field adjoining to a village or a paſture ground, and which is unfenced.

"PASTURE ground," a ſpace of graſs land reſerved for feeding cows and the like. a field adjoining to that. The *Retnácara.*

XXVIII.

YA'JNYAWALCYA:—No offence exiſts, if *damage be done* unintentionally in a field ſituated near the road, the village, or the paſture ground: but if the cattle be wilfully grazed there, the offender is liable to be puniſhed as a thief.

CONSEQUENTLY the declaration, that "there is no offence if the field be near the road or the paſture ground," is reſtricted to the caſe of cattle accidentally grazing in it: and this alſo has been intimated by VISHNU in another form; "if the cattle graze for a ſhort time &c." (XXVI). Such is the opinion delivered in the *Chintámeni.*

BY the term uſed in the texts of VISHNU, NA'REDA and YA'JNYAWALCYA, "within *the paſture ground &c.*" it is declared, that no blame *falls on the herdſman* if the field be ſituated near the paſture ground. But there can be no grain in the paſture ground. However, when grain is ſown within the ſpace of four hundred cubits, the paſture ground is reduced by the conſent of the inhabitants or otherwiſe: and in the text of MENU (XXV), "within that," or there, is the ſeventh or local caſe uſed in the

ſenſe of proximity; as in the line, "CRĬSHNA ſports in the woods (in, or) near the *Cálindí* (or *Yamunáj*:" and even according to thoſe, who hold, that the name of the river has, in that example, the ſecondary ſenſe of its neighbourhood; the word there, or within that, may in the preſent inſtance ſignify near that *paſture ground*. Thus others explain the text.

SHOULD a field, ſituated near the road or highway, or near the village or paſture ground, be grazed by cows, without deſign *on the part of the herdſman or his maſter*, no blame is imputable either to the cowherd, or to the owner of the cattle; that there is no offence, is mentioned to exempt them from penalties and from paying the value of the grain damaged. But, if the cattle be wilfully grazed there, the offender ſuffers puniſhment, as a thief, for grazing cattle there by deſign: namely ſuch a puniſhment, as is inflicted on a thief. The text of YA'JNYAWALCYA (XXVIII) is ſo explained in the *Mitácſhará*.

XXIX.

MENU:—SHOULD cattle, attended by a herdſman, do miſchief near a high way, in an encloſed field, or near the village, he ſhall be fined a hundred *panas;* but againſt cattle, which have no keeper, let the owner of the field ſecure it.

NEAR a highway, or near the village, in a field of arable land encloſed with a hedge, ſhould cattle, attended by a herdſman, *but* not reſtrained by him, enter the field by the gate or otherwiſe, and graze in it; he ſhall be fined a hundred *panas:* and, as the beaſt cannot be fined, the herdſman muſt pay the fine. But the perſon, who watches the field, muſt drive away beaſts, which have no keeper, if they be found grazing there.

CULLU'CABHATTA.

XXX.

NA'REDA:—If damage be done to grain by cows or the like breaking through a fence, the herdſman ſhall in that caſe be puniſhed, if he did not reſtrain the cattle, though able *to do ſo.*

" A

" A FENCE;" an obſtacle.

CHANDE'SWARA.

" BREAKING;" this follows the regular ſenſe of the crude verb *crĭtĭ*, cut. " The herdſman ſhall be puniſhed;" if he do not reſtrain the cattle, he ſhall be fined a hundred *paṇas:* for the text coincides with that of MENU (XXIX). But, perceiving the breach in the fence, if he immediately reſtrain the cattle, no blame is imputable to him. " Though able;" from this expreſſion *it appears, that* no blame is imputed to him, if he then happen to be unable to reſtrain a bull eager to approach a cow: and ſo in other caſes. Thus other lawyers declare *the rule*.

XXXI.

USA'NAS:—NEITHER anceſtors, nor deities, taſte the offerings of that man, who demands compenſation for corn deſtroyed by cows.

IT is thus ordained, that the owner of the corn ſhould not take the value of grain conſumed by cows. But if, violating the preſcribed ſyſtem of duty, he do demand *compenſation*, the judge muſt enforce payment; for there is no exception *relative to cows* in forenſick law. The judge muſt *of courſe* enforce payment of the value of grain conſumed by any other beaſt.

IT is declared, that there is no offence if damage be done to grain in a field unencloſed with a hedge (XXV); and that there is offence, if corn, in a field encloſed with a hedge, be eaten *by cattle:* what ſort of a hedge *ſhould be made?* MENU himſelf deſcribes it.

XXXII.

MENU:—LET the owner of the field encloſe it with a hedge *of thorny plants*, over which a camel could not look; and let him ſtop every gap, through which a dog or a boar could thruſt his head.

ROUND a field of arable land, let him make a hedge of thorny plants, in ſuch

such a mode, that a camel, standing on the other side, may not overlook it; and let him stop every gap whatsoever, through which a dog or a boar could thrust his head. CULLU'CABHATTA.

XXXIII.

NA'REDA:—ROUND a field near the highway, a hedge should be made, over which a camel could not look; which no beast could overleap; and which neither a dog, nor a boar, could break through.

"OVER which a camel could not look;" that is, of such a height, that a camel, standing on one side of it, could not look over it to the other side. HELA'YUDHA.

IT follows, that the hedge should be high; for, if a camel, passing by, see the corn enclosed by it, then, breaking the hedge and impelled by hunger, he cannot be restrained by his keeper. If a low hedge be made, there is no offence in the case of mischief done by a camel *in such a field*, any more than in *the case of a trespass on* a field unenclosed by a hedge: and so in respect of elephants, horses and the like.

OVER which hedge cattle cannot reach, and see the grain within it. The *Párijáta*.

XXXIV.

SANC'HA and LIC'HITA: — To a field near the road a hedge should be made, over which a camel could not look; and through which a dog or a boar could not open a passage.

"A PASSAGE." *Here is* an interval: *that is*, an opportunity *of entrance*. The *Ratnácara*.

CONSEQUENTLY such a fence must be made, by means of which cattle may be prevented from forcibly destroying the corn. If that be not done, [illegible] is incurred by the keepers of the several sorts of cattle. At what

[illegible]

ſeaſon a fence ſhould be made, CA'TYA'YANA declares, for the benefit of the huſbandman.

XXXV.

CA'TYA'YANA:—WHEN the grain is not yet produced, let him make a ſtrong fence; for beaſts, eager after once taſting what they reliſh, are with difficulty hindered.

" BEASTS" here ſignify cattle. The *Retnácara.*

" STRONG;" *literally* great: by this is ſuggeſted a hedge over which a camel cannot look, and through which a dog or a boar cannot open a paſſage.

" AFTER once taſting what they reliſh." the meaning is, when they taſte things, which are deſired by them.

XXXVI.

MENU:—IN other fields, the *keeper of* cattle *doing miſchief* ſhall be fined one *pana* and a quarter; but, in all places, the value of the *damaged* grain muſt be paid: ſuch is the fixed rule concerning a huſbandman.

IN other fields, not adjoining to the road ſide and the like, ſhould miſchief be done by cattle, the keeper ſhall be amerced. It ſhould be here noticed, that the fine is one *paña* and a quarter for every head of cattle. So the *Retnácara*: and CULLU'CABHATTA *gives* the very ſame *interpretation.*

IN other fields, ſituated at a diſtance *from the highway and the like*, diſtinct fines are ordained for diſtinct kinds of cattle: ſo the *Chintámeni.* Thoſe fines will be ſubſequently mentioned.

" IN all places" (XXXVI); the grain conſumed by *cattle* in any field, muſt be made good to the owner of it, by the herdſman or by the owner *of the cattle*, according as the offence is *imputable to one or the other.* Such ſhould be the deciſion. CULLU'CABHATTA.

THUS property in the field is attributed to the husbandman by this very gloss of CULLU'CABHATTA. It appears from the phrase, "in all places" (XXXVI), that the grain eaten *by cattle*, off a field enclosed with a hedge as abovementioned, must also be made good to the husbandman.

XXXVII.

SANC'HA and LIC'HITA :—A cow, grazing during the night, *brings on its owner, or keeper, a fine of* five *máshas*; during the day, three *máshas;* and for one hour *(muhúrta),** one *másha :* but no fine *is imposed if she graze* in the village.

"GRAZING;" eating until satiated. Hence, if she graze *by day* until she be satisfied, *the fine is* three *máshas*. But if she graze for one hour only, a fine of one *másha* should be levied. However, no fine shall be imposed for her grazing within the village; that is, in a field within the limits of the village and the like. A *másha* here signifies the twentieth part of a *cárshápana*, as declared by NA'REDA.

XXXVIII.

NA'REDA :—BUT a *másha* may be considered as the twentieth part of a *cárshápana.*

AND that is meant of silver. Accordingly the author of the *Bháshya* says;

IN matters of fine it is proper to count by *máshas* of gold: but, for grain eaten by cattle, *the fines are regulated* by other *máshas; namely, those* of silver.

A *cárshápana* is also *a measure* of silver *as well as of copper;* and here a *másha* of silver contains two *rattis* or seeds of the *gunjá*, each equal to three barley corns: as is declared by MENU (Chapter 8, v. 134 and 135). The text of SANC'HA and LIC'HITA is thus expounded in the *Ratnácara*, and also in the *Vivádá Chintámani.*

* *Muhúrta* the thirtieth part of a day and night.

SINCE

SINCE the author of the *Bháſhya* directs the *máſha* of ſilver in the caſe of grain eaten by cattle, *becauſe he is* ſcrupulous of the great inequality in compariſon with the fine of one *paña* and a quarter, whether the *máſha* containing ſixteen *raćticás* be taken, as declared by VRĬHASPATI (" but the twentieth part of a *pala* is called a *máſha*:") or the *máſha* containing five *raćticás*, as mentioned by MENU (" five *crĭſhnalas*, or *raćticás* of gold, are one *máſha*"); *therefore* the rule is thus ſettled by authors, who think that the *máſha* of ſilver, containing two *raćticás*, as mentioned by MENU, ſhould not be abandoned: if the beaſt eat grain during the night until it be ſatisfied, a fine of ten *raćticás* of ſilver *ſhall be paid* to the king; if it eat ſo long during the day, ſix *raćticás* of ſilver; if it do not eat until it be ſatisfied, but graze for ſome ſhort time, whether by night or day, two *raćticás* of ſilver: and the value of the grain conſumed in the field muſt be made good to the huſbandman. This proceeds on the ſuppoſition of one *paña* and a quarter being equal to two *raćticás* of ſilver: if they be unequal, a diſtinction muſt be aſſumed from the *ſort*, *or from the quantity*, *of* grain deſtroyed. But others explain a *paña* and a quarter in the text of MENU (XXXVI), as ſignifying a *paña and a quarter* of copper.

As for the opinion, that a fine of one *máſha* for a cow grazing during one *muhúrta* is directed, to obviate the doubt, " what fine ſhould be impoſed in the caſe of a cow grazing during twilight; becauſe diſtinct rules are delivered for the reſpective caſes of a cow grazing during the day and during the night;" and accordingly the law declares, that " twilight, called *muhúrta*, is conſidered as uniform, whether *the day* increaſe or wane;" and here the word *muhúrta* denotes a particular hour *of the day*; that opinion is wrong: for common ſenſe oppoſes the ſame regulation, when *a cow* has grazed *in a ſtranger's field* during the night, whether ſhe grazed *there* for ſome trifling ſpace of time, or until ſhe were ſatisfied: and there is no *real* difficulty, ſince twilight, excluſive of day and night, is not admitted in philoſophy.

" *But no fine, in the village* " (XXXVII); ſince this has obviouſly the ſame import with the text of MENU (XXV), no fine is impoſed for a cow grazing near the village, or near the high way; *it is* not *meant*, *that* no fine

is

SINCE *the word* horſe is here exhibited in the maſculine gender, the ſame amercement ſhould be paid for male buffalos and the reſt which is directed for females; and the ſame for a mare and for a horſe. But cows and female buffalos are inſtanced, conſidering the excellence of the female which affords milk for conſumption.

"AND two each, for a goat and a ſheep;" the meaning is two and a half. To exhibit the coincidence of this text of GO'TAMA (XL) with that of CA'TYA'YANA above cited (XXXIX), ſome explain "a quarter," the fourth part of the fine juſt mentioned for a buffalo grazing in a ſtranger's field; that is a fourth part of two quarters of a *paṇa*: for it has the ſame import with the text to be quoted from YA'JNYAWALCYA (XLII). Others ſay, it ſuppoſes particular miſchief, happening without deſign. This rule of GO'TAMA concerns cattle grazing during the night.

XLI.

SANC'HA and LIC'HITA:—FOR the young of every ſort of cattle, a *māſha*; for a female buffalo, ten; for an aſs and a camel, ſixteen; for a goat and a ſheep, four.

THIS text coneurs with *thoſe of* GO'TAMA and CA'TYA'YANA, in directing a fine of ten *máſhas* for a female buffalo. "Sixteen, for an aſs and a camel," contradicts GO'TAMA. "Four, for a goat and a ſheep," contradicts both GO'TAMA and CA'TYA'YANA: and "a *máſha* for *calves, or* the young of cattle," contradicts CA'TYA'YANA.

ON this point ſome hold, that the connexion of terms is remote in the phraſe, "ſix for a camel; ten for a horſe or a female buffalo" (XL): in this manner; for a horſe or a female buffalo, ten; for a camel, ten and ſix, or ſixteen; and ſo forth: and the meaning of "four for a goat and a ſheep," is, two for a goat, and two for a ſheep. "A *máſha* for young cattle," is here meant of a *máſha* conſiſting of five *críſhnalas*. It ſhould not be objected, that the *máſha* of five *críſhnalas* is inadmiſſible, becauſe MENU has defined the *máſha* of ſilver, as conſiſting of two *críſhnalas* only. Since MENU has alſo defined the term *cárſhápana* as relating to copper only,

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is imposed for *her* grazing on land appropriated to dwelling places. "Village" is here used in the locative case with the sense of proximity, as *in the example quoted;* "CRĬSHNA sports in the forest (in, *that is*) near the *Yamunà*." Consequently, there is no difficulty: and it should be so understood.

THE following text elucidates what is observed in the *Chintámeni*, that distinct fines are ordained for distinct kinds of cattle.

XXXIX.

CA'TYA'YANA:—*For mischief done by* a cow let the king compel *the owner* to pay a quarter of a *paña; for* a female buffalo, two quarters: but for goats, sheep and calves, the fine ordained is a quarter *of that, which has been last mentioned.*

HERE a quarter of a *paña* should be considered as the fine *ordained* if the grain were eaten during the night. A quarter of a *paña* is the fourth part of a *cárshápana.*

The *Retnácara.*

Paña here signifies *cárshápana.*

The *Chintámeni.*

THIS obviously means a *cárshápana* of silver, consisting of forty *crĭshnalas* or seeds of the *gunjá*: for the text of NA'REDA declares, that a *másha* is the twentieth part of a *cárshápana* (XXXVIII); and the text of MENU expresses, that "two *crĭshnalas* or *rattiás* of silver are considered as one *máshaca.*" A quarter of a *paña* (or ten *crĭshnalas* of silver) is the same with five *máshacas* of silver: and this coincides with the text of SANC'HA and LIC'HITA (XXXVII).

XL.

GO'TAMA:—FIVE *máshas*, for a cow; six, for a camel; ten, for a horse or a female buffalo; and two each, for a goat and a sheep.

SINCE

SINCE *the word* horſe is here exhibited in the maſculine gender, the ſame amercement ſhould be paid for male buffalos and the reſt which is directed for females; and the ſame for a mare and for a horſe. *But cows and female buffaloes* are inſtanced, conſidering the excellence of the female which affords milk for conſumption.

"AND two each, for a goat and a ſheep;" the meaning is two and a half. To exhibit the coincidence of this text of GO'TAMA (XL) with that of CA'TYA'YANA above cited (XXXIX), ſome explain "a quarter," the fourth part of the fine juſt mentioned for a buffalo grazing in a ſtranger's field; that is a fourth part of two quarters of a *paña*: for it has the ſame import with the text to be quoted from YA'JNYAWALCYA (XLII). Others ſay, it ſuppoſes particular miſchief, happening without deſign. This rule of GO'TAMA concerns cattle grazing during the night.

XLI.

SANC'HA and LIC'HITA:—FOR the young of every ſort of cattle, a *máſha*; for a female buffalo, ten; for an aſs and a camel, ſixteen; for a goat and a ſheep, four.

THIS text concurs with *thoſe of* GO'TAMA and CA'TYA'YANA, in directing a fine of ten *máſhas* for a female buffalo. "Sixteen, for an aſs and a camel," contradicts GO'TAMA. "Four, for a goat and a ſheep," contradicts both GO'TAMA and CA'TYA'YANA: and "a *máſha* for *calves, or* the young of cattle," contradicts CA'TYA'YANA.

ON this point ſome hold, that the connexion of terms is remote in the phraſe, "ſix for a camel; ten for a horſe or a female buffalo" (XL): in this manner; for a horſe or a female buffalo, ten; for a camel, ten and ſix, or ſixteen; and ſo forth: and the meaning of "four for a goat and a ſheep," is, two for a goat, and two for a ſheep. "A *máſha* for young cattle," is here meant of a *máſha* conſiſting of five *críſhnalas*. It ſhould not be objected, that the *máſha* of five *críſhnalas* is inadmiſſible, becauſe MENU has defined the *máſha* of ſilver, as conſiſting of two *críſhnalas* only. *Since* MENU has alſo defined the term *cárſhápana* as relating to copper only,

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there could not be alſo a *cárſhápana* of ſilver; it may therefore be ſaid, that the ſeveral terms likewiſe ſignify thoſe ſeveral weights of iron or other *metals*. Or "a *máſha* for young cattle" may ſuppoſe very young cattle; and the text of CA'TYA'YANA (XXXIX) may ſuppoſe older calves. The young of all ſorts of cattle, or any beaſts in the firſt period of life, are intended.

XLII.

YA'JNYAWALCYA: — *The owner of* a female buffalo, doing damage to grain, ſhall be fined eight *máſhas*; *of* a cow, half that *amercement*; and *of* a goat or ſheep, half *again* of this amercement:

2. For cattle eating and lying down in the field, the fine is double the amercement mentioned. It is alſo the ſame if they treſpaſs on preſerved paſtures; and the fine for an aſs or a camel is the ſame with that for a female buffalo.

A FEMALE buffalo, doing miſchief in a ſtranger's field, ſhall be fined eight *máſhas*; a cow, half that, or four *maſhas*, goats and ſheep ſhall be fined two *máſhas*. As buffalos and the reſt have no intereſt in wealth, the perſon, who owns them, is intended. A *maſha* here ſignifies the twentieth part of a *paña* of copper; for NA'REDA records, that a *máſha* is conſidered as the twentieth part of a *paña*: and the text concerns *a treſpaſs* without deſign.

The *Mitácſharà*.

SOME remark it, as the ſenſe of the *Mitácſharà*, that the fine is *regulated by a* maſha *conſiſting of* four *ratticás* of copper. But that is erroneous; for the author of the *Bláſhya* declares *fine s to be regulated by* the *maſha* of ſilver, in the caſe of cattle grazing *on a ſtranger's ground*: and thus, according to the *Mitácſharà*, the fine is *determined by a* maſha, *or quantity of* ſilver, weighing five *ratticás*: and that contradicts the opinion already quoted from the *Retnacara* and other works. Apprehending its inconſiſtency with the texts, which ordain a fine of five *aſhas* (XL), *the author of the* Mitácſharà *adds*; the text concerns a treſpaſs without deſign, meaning damage done to grain

without

without design on the part of the keeper. But if the damage happen with his previous knowledge, the fine is that *which is* directed by CA'TYA'YANA and the rest. Such is his opinion.

OTHERS apply the two texts, which ordain fines of eight and ten *máshas*, according to the particular damage done, or particular age of the beast.

XLIII.

NA'REDA: — LET the king compel *the owner of* a cow, *which has done mischief*, to pay a fine of one *másha*; and *of* a female buffalo, two *máshas:* and let the fine for goats, sheep, or young cattle, be half a *másha*.

THIS supposes corn consumed, but so that the root remains fit for replanting. Such is the interpretation proposed in the *Mitácshará*.

" FOR cattle eating and laying down" (XLII 2); if cattle, after eating grain in a stranger's field, sleep there undisturbed, the fine shall be double; if, accompanied with their young, they graze and lie down, it shall be quadruple the fine that has been mentioned: for a text ordains,

XLIV.

TWICE as much is directed for cattle abiding there; and four times as much, for cattle accompanied by their young.

THIS *is* also *stated* in the *Mitácshará*.

" IT IS the same &c." (XLII 2); even for mischief done in a preserved pasture, the fine is similar to that *which is ordained* in the case of mischief done by cattle in a field. The *Retnácara*.

" A PRESERVED pasture," a preserved space of ground, abounding in grass and wood. If mischief be there done, the fine is equal to that for trespasses on other fields. " If they trespass;" if buffaloes and the rest *do mischief*. The *Mitácshará*.

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THE *Retnácara* ſhould alſo be quoted on this point. The fine for an aſs or a camel is the ſame with that paid for a female buffalo; in whatever fine *the owner of* a female buffalo is amerced in each caſe, in ſuch a fine ſhall *the owner of* an aſs or a camel be amerced in the ſame caſe. Such is the opinion expreſſed in the *Mitácſhará*.

XLV.

VISHNU:—IF a female buffalo do injury to grain, her keeper ſhall be fined eight *máſhas:* or *if* a horſe, a camel, or an aſs *do ſo, the amercement is the ſame*; if a cow *treſpaſs*, half *that fine*; if a goat or ſheep *do miſchief*, half that again: if the cattle lie down after grazing, *the amercement is* doubled.

" A HORSE, a camel, or an aſs;" ' if *they* do injury to grain,' is brought forward *from the preceding ſentence.* The *Retnácara.*

CONSEQUENTLY it has the ſame import with the text of YA'JNYAWALCYA (XLII); but VISHNU (XLV) diſagrees with GO'TAMA (XL) and with SANC'HA and LIC'HITA (XLI). On this point ſome *lawyers* obſerve, that, in particular countries, an aſs and a camel being *held* equal to a female buffalo, the text of VISHNU *is* there *applicable*; in ſome places, an aſs and a camel conſuming more than a female buffalo, the text of SANC'HA and LIC'HITA there *regulates the fine.*

XLVI.

NA'REDA: — LET *the owner or the keeper of* cows be fined a quarter *of a* cárſhápana; *and the proprietor or the herdſman of* female buffalos, twice as much; another fine of a *máſha* is ordained for a goat or a ſheep *treſpaſſing* with its young.

2. FOR cattle eating grain until they be ſatisfied, the fine is double; but, for cattle abiding, *it is* quadruple: and the puniſhment of theft is ordained by the wiſe, for thoſe who graze cattle *on a ſtranger's ground* in *their own* ſight.

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"A QUARTER;" the fourth part of a *cárſhápana*, or ten *raſhicás* of ſilver. "Twice as much;" twenty *raſhicás* of ſilver. "Another fine of a *máſha*;" ſince the fine for goats and ſheep is, in every inſtance, declared half that for a cow, it ſignifies a *máſha* containing five *criſhnalas*.

CHANDE'SWARA explains the *term uſed in the text*, ſatisfied with grain eaten; and "abiding," paſſing the night there after grazing. This ſuppoſes cattle paſtured unperceived; but for them, who graze cattle openly *on a ſtranger's ground*, the puniſhment of a thief is ordained. "Who graze cattle in their ſight" (XLVI 2); who paſture them by force, even in the preſence of the huſbandman.

IN the *Chintámeni* a ſimilar expoſition is delivered: it is there ſaid, that the ſenſe *of the firſt hemiſtich* (XLVI 2) is *this*; if they paſs ſuch a length of time, that they lie down after eating grain, and afterward, hunger returning, graze *there* again.

WE cannot diſcover, why it is ſaid; "even in the preſence of the huſbandman;" for every difficulty is removed by ſaying; "in the *ſight or* preſence of the herdſman, who ſuffers the cattle to conſume the grain."

XLVII.

NA'REDA.—BUT if a cow, ſtraying by the fault of the herdſman, damage a field, no penalty is, in that caſe, exacted from the owner: the herdſman ſuffers the puniſhment of that *offence*.

2. BUT he (*the owner*) ſhould reſtrain the cows from *fields of* grain: if they graze there *with his knowledge*, the blame falls on both maſter and herdſman; the maſter ſhall be compelled to pay the value of the grain and a fine, and the herdſman ſhall be ſcourged.

IN a *preceding* text (XLVI 1) a rule is propounded for an amercement of a quarter of a *cárſhápana* and ſo forth, *to be levied* on cows and other cattle.

That cannot be ſtrictly applicable, becauſe cows and the reſt have no property; therefore *the ſage* himſelf announces the induction (XLVII). "Staying;" going out of ſight. If cows, intruſted to a herdſman, deſtroy grain out of his maſter's ſight, by the fault of that herdſman, the penalty falls on *him* alone: in a ſimilar caſe, if their owner ſee them eating the grain, he ſhould drive them off; but if he reſtrain them not, he muſt pay the amercement and make good the value of the grain conſumed: for ſuch is the ſenſe attributed to *the word* penalty, ſince the maſter is concerned. To chaſtiſe the herdſman, a ſcourging is directed. That alſo is a penalty. This ſhould be underſtood: and CHANDE'SWARA virtually gives the ſame interpretation.

XLVIII.

YA'JNYAWALCYA:—As much grain as ſhall be deſtroyed, ſo much produce ſhall be *paid* to the huſbandmen; the herdſman ſhall be ſcourged; but the owner of the cattle incurs the fine already declared.

GRAIN is mentioned to denote generally the produce of fields. As much ſtraw, grain, or the like, as is deſtroyed by cows or other cattle, ſo much produce ſhall the owner of them be compelled to pay to the owner of the field; according to the valuation determined by arbitrators, in this form, "from ſo much land the produce is ſo much." But the herdſman ſhall only be beaten; he ſhall not be compelled to pay for the produce: the ſcourging of the herdſman, accompanied by the pecuniary fine abovementioned, muſt be applied to the caſe of damage done to grain by his fault (XLVII 1). Again; the owner of the cattle incurs the fine already declared, if grain be injured by his own fault: *he is* not *liable to* a ſcourging. But in every caſe, the produce muſt be made good by the owner of the cattle alone; for he participates in the produce of the field, by means of milk obtained from female bulfalos and the like fed on graſs, the produce of that field. The produce, remaining above *the quantity* conſumed by the cows and the like, ſhould be taken by the owner of the cattle; for he has abſolutely bought it by payment of the price adjudged by arbitrators. VIJNYA'NE'SWARA.

CONSEQUENTLY, in thoſe caſes alſo where the herdſman ſhall be amerced, the

the value of the grain consumed shall be paid by the owner of the cattle to *the proprietor of the field. Such is his meaning.* But that is not the opinion of CHANDE'S'WARA; for, in a gloss on the following text of NA'REDA (XLIX), he says, "if the corn be destroyed together with its root, both *the master and herdsman* being in fault, the master must pay grain to the amount of the damage, and a fine."

XLIX.

NA'REDA:— BUT if the corn be destroyed together with its root, let the owner *of the land* receive the *quantity of* grain, *which would have been produced* from that *field*; let the herdsman be dismissed with blows; and let the amercement fall on *his* master.

IN the first part of the text of YA'JNYAWALCYA (XLVIII) it is directed, that the grain shall be received by the husbandman; but the person, from whom it shall be received, is not mentioned. Therefore, since the king must receive the amercement, it may thence be argued from suggestions of common sense, that, in the case where the herdsman suffers the punishment *or incurs the penalty* (XLVII 1), both the husbandman and the king receive a penalty.

IN the preceding texts fines are declared against female buffalos and other cattle; and that is incongruous, since they have no wealth; hence it is said, the herdsman shall be scourged (XLVIII). But *(it is added)* the owner of the cattle incurs the fine; this, however, supposes the case of a fault on the part of the owner of cattle. CHANDE'SWARA's opinion must be so understood. Consequently, it should be held, on his construction *of the law*, that a penalty must also be paid to the owner of the field, by the same person, and in the same case, in which a fine is paid by that person to the king.

"WITH blows" (XLIX); with hurt proportioned to the offence. Corn is considered as destroyed together with its root, when the mischief is such, that it cannot be replanted. CHANDE'SWARA.

Is not this text superfluous; since the same sense is deduced from a former one, "the master shall be compelled to pay the value of the grain and a fine" (XLVII 2)? This text is a reply to the question, to whom shall the value of the grain be paid: and thus, if the corn can be replanted, and the crop be *so* obtained in consequence of a pecuniary payment *for the charge of replanting the corn*, an equivalent shall not be again paid for the *plants* eaten.

L.

VISHNU:—AND in every case, *the offender shall be compelled to pay* the value of the grain destroyed.

"SHALL be compelled to pay" must be supplied in the text. "In every case," whether the cattle be attended or unattended. The *copulative* "and" connects the subject with the fine *payable* to the king.

The *Retnácara*.

LI.

NÁREDA:—BUT to that man, who demands *compensation for* grain consumed by cows, *the value of* it must be paid, as determined by arbitrators: wherever destroyed,

2. Grass must be made good to its owner, and grain to the husbandman. A fine, indeed, is also ordained, if corn be trodden down by cows.

"THE grain consumed;" in proportion to the grain consumed, *must payment be made*. "Grass," *common* herbage: and this payment for herbage occurs in the case of a reserved pasture. The *Retnacara*.

"GRASS," blades of corn. "The owner;" the proprietor of the cattle. The blades of corn or the grain must be made good by him to the husbandman. Such *is* the sense of *the texts*.

The expiation may be taken *scripturally with municipal, but not with moral, law*,

law, for it is a cauſe of *ſinking to* a region of torment. It ſhould not be taken *by a righteous man*, for *that is diſcouraged by* the text of USANAS above cited (XXXI).

The *Chintámani*.

THE meaning of *that gloſs of* the *Chintámani* is, that NA'REDA intimates a right of taking *compenſation*, by this expreſſion, "that man, who demands *it*." "As determined by arbitrators:" adjudged by arbitrators in this form; "ſo much grain *would have been produced* in this field."

THE *apparent* contrariety of *texts*, propounding inconſiſtent fines for the very ſame offence, muſt be reconciled by regulating *the fine* according to *the treſpaſs committed* by day or night, with or without deſign.

The *Retnácara*.

THUS the *apparent* inconſiſtency *of the texts* of GO'TAMA, YA'JNYAWALCYA and the reſt, ſhould be reconciled, as propoſed in the *Mitácſhará* and other works. Such alſo is the opinion *intimated* in the *Retnácara*.

SECTION III.

ON TRESPASSES NOT FINABLE.

ON the ſubject of herdſmen,

LII.

NA'REDA *ordains*.—IF he be ſeized by the king or by a crocodile, ſtruck by thunder and lightning, bitten by a ſerpent, *hurt by a* fall from a tree,

2. Smitten by a tiger or the like, or attacked by diſeaſe, there is no offence on the part of the herdſman, nor *is* any blame *imputable* to the owner of the cattle.

IF the herdſman be ſeized by the king for the purpoſe of *employing him in* the performance of work, or if he be ſeized by an alligator, under ſuch circumſtances, ſhould grain be eaten by the cattle committed to his charge, no blame is imputable to him If he be ſtruck "by thunder and lightning," a diſtinction muſt be ſuppoſed between theſe, from ſome difference in the mode *in which he is ſtruck* Sometimes a man ſurvives, though ſtruck by thunder and lightning therefore no blame is imputable to a herdſman affected by ſuch an accident "Nor to the owner of the cattle" If the herdſman die in conſequence of ſuch an accident, no blame is imputable to the owner of the cattle, provided he was ignorant *of the treſpaſs*

LIII

YA'JNYAWALCYA —A BULL, conſecrated cattle, a cow, which has lately calved, a ſtray, and other beaſts, which are not attended by a keeper, ſhould be ſet free, *for* they are impelled by GOD and the king.

"A

" A BULL" kept for impregnation. " Consecrated cattle," dismissed in honour of the deity, according to the form for consecrating bulls. " A cow, which has lately calved;" within ten days after her calving. " A stray;" wandering from its own herd, and coming from another country. These " should be set free;" even though they consume a stranger's grain, no fine shall be *levied*. Cattle also, " which are not attended by a keeper, are impelled by GOD and the king;" they are urged by GOD and the king; therefore, if they destroy grain, no fine shall be levied. Under the term " other beasts," elephants, horses and the like are comprehended; and they are mentioned by US'ANAS. The *Mitácshará*.

IN the *Ratnácara* also, the same *exposition is given*. Since a fine cannot be imposed for consecrated cattle, which have no *human* owner, the mention of them *must be intended* for the purpose of illustration. As consecrated cattle occasion no amercement, so bulls and the rest *occasion none*. This also *is noticed in* the *Mitácshará*.

A BULL cannot be restrained. Consecrated cattle are beasts dismissed in honour of the deity. As land dedicated to the deity, and the vessels appropriated to worship, are held and kept by the *substituted* worshipper of the deity; so, if some person feed, with grass or the like, cattle consecrated by any man, it might be questioned whether he should be liable to a fine; and since it might be questioned, in the case of a bull dismissed, whether the dismisser be liable to a fine, because he is the remote cause of the trespass; *therefore* it is declared, *that* no fine *shall be imposed*. Or it is so declared, on the doubt whether the keeper might be fined for mischief done by consecrated cattle attended by a keeper. It might be questioned whether a fine should be *levied for the trespass* of a stray, when the owner is ascertained by long watching the beast: and it is declared, that no fine shall be exacted for the transgression of those *herdsmen*, who abscond through fear of GOD or the king; nor from owners of unattended cattle, provided the cattle be fortuitously unguarded; nor for cattle terrified by the fall of thunder or the like. Thus others expound the law.

" STRAYS," coming from another village, or wandering from the herd,

and which are not attended by a keeper. Such is the ſenſe of *the text*. The meaning is, that there is no offence, if cattle, running away on ſeeing an army, or on hearing *ſome frightful* noiſe or the like, graze in a ſtranger's field.

The *Chintámeni*.

But the ſenſe is thus *ſtated* in the *Retnácara*: cattle which have ſtrayed in conſequence of rain or the like, through the act of God, or through *ſome act of* the king's officers, without any fault on the part of the herdſman, ſhould be ſet free.

But "or" is ſupplied in the *Páryáta;* "or *thoſe*, which are not attended by a keeper." In fact, it ſhould be aſſumed both ways; for they are *both* equally pertinent.

LIV.

MENU:—For damage done by a cow before ten days have paſſed ſince her calving, by bulls *kept for impegnation*, and by cattle conſecrated to the deity, whether attended or unattended, MENU has ordained no fine.

A cow within ten days after her calving, bulls diſmiſſed with marks of the trident and diſcus*, cattle dedicated to the deity, whether attended or unattended, MENU has declared not finable, when found grazing in corn. Since even conſecrated bulls are kept by herdſmen among cows, for the ſake of impregnating them, it is poſſible, that they may be attended by a keeper.

CULLU'CABHAT'T'A.

"BULLS" kept for impregnatinn.

The *Cluntameni*.

* The figure of a trident is ſtamped with a hot iron on the right ſhoulder, and a circle or diſcus on the left; or the firſt mark is diſmiſſed with four bits of cloth or leather tied under inciſions of muſcles on the ſame ſhoulder with ſinews, and the ſecond being made with a hot iron, on a fleer diſmiſſed a mixture of cow's urine of three days. For it does not hence follow conſecration of the bull to Rudra, as Medhátithi, or to Vishnu, as the Mahárashtra people of Vijnán'u, for it does not appear, that the bull is conſecrated to the deity.

"BEFORE

" BEFORE ten days have paſſed ſince her calving," the meaning is, if ten days have not elapſed ſince her calving

LV.

NA'REDA: — A cow, within ten days, after her calving, a bull, horſes, and elephants, ſhould be diligently kept off; their owner is not blamable *for their treſpaſſes.*

" HORSES and elephants," appropriated to the protection of the ſubject.

The *Retnacara.*

LVI.

US'ANAS:—FOR elephants and horſes no fine *is allowed*, ſince they are conſidered as defences of the ſubject, nor for cattle blind of one eye or lame, nor for bulls marked *with the token of conſecration.*

2. Nor for *a* ſtray, nor for a cow which lately calved, nor for one, which deſires the male; nor for cows, during jubilees, nor at the ſeaſon of obſequies.

" LAME," crippled. By the terms, " blind of one eye or lame," is here denoted cattle very much diſabled " Bulls marked," diſtinguiſhed by the mark of a trident and the like. " Perverſe " *(for* CHANDE'S'WARA *reads* abhichárinì, *inſtead of* abhiſárinì *concupiſcent*, one, which bears exceſſive beating *without obeying its driver.*

The *Retrácara.*

IN the *Párijata* it is read, *abhiſárinì*, and explained, " one, which deſires the bull." " Horſes" belonging to the king, for they are a defence to the ſubject As for what is declared by GO'TAMA, "ten for a horſe or a female buffalo" (XL), that concerns horſes belonging to traders and the like. conſequently there is no inconſiſtency.

IN the *Chintamani* the reading is, *vyabhichárinì*. it ſignifies one, which is

 much

much difpofed to run away *from its keeper*. The words, "blind of one eye or lame," are *there* expounded as in the *Retnácara*.

"Nor for cows;" conſequently, ſhould ſome inconſiderable miſchief be done by cattle belonging to owners wholly occupied in the celebration of a feſtival or the like, no fine *ſhall be exacted*. Thus other *lawyers explain the text*.

LVII.

SANC'HA and LIC'HITA:—SMALL cattle, and animals of general uſe, may not be driven away; *the owners of* mules, elephants, and horſes are exempt from fines; ſuch beaſts are ungovernable, and ſhould be gently driven away.

"A MULE," born of a mare by an aſs. "Ungovernable;" beaſts, which cannot be readily driven away.

The *Retnácara*.

"SMALL cattle;" calves, *or young cattle*, may not be driven away. "Animals of general uſe," ſuch as cats and the like, occaſion no amercement, even though they do miſchief: thoſe *animals*, which are of general uſe, or which ſuit the purpoſes of all, ſhould be maintained by all. "Mules, elephants, and horſes," appropriated to the protection of the ſubject. Thus others *expound the law*.

BUT in the *Cintámeni* the reading is, "ſmall cattle, and ungovernable mules, elephants and horſes." "Ungovernable" is explained, unmanageable.

THE reading of the *Pracáſa* and *Párijáta* is *abadhya* (explained "not to be ſmitten"), inſtead of *avárya*, ungovernable.

LVIII.

CA'TYA'YANA:—IF cattle of the loweſt, higheſt, or middle ſorts be beaten, ſhould their owner ſue *the offender*, let the king adjudge a fine.

2. BUT

2. But Vrĭhaspati permits the ſeizure and chaſtiſement of beaſts, which treſpaſs in fields, flower gardens, preſerved paſtures, houſes, or ſtalls for cattle.

"Stalls *or paddocks*;" places abounding in graſs. "Seizure;" binding *or tying*. Chande'swara.

There is no offence in beating or tying cattle which treſpaſs in a houſe or the like. Va'chespati-misra.

But the reading, approved by him, is, *paſu rájiſhu*, among ſtrings of cattle, inſtead of *paſu vàt'iſhu*, in ſtalls for cattle: and preſerved paſtures ſignify places abounding in graſs.

In the firſt text (LVIII 1), "*againſt the ſtriker*" muſt be ſupplied after the words, "adjudge a fine:" and the *ſecond* text is recited by Misra with theſe words premiſed, "the ſage declares an exception to that rule." Thus, if he ſtrike cattle without a fault, the ſtriker ſhall be amerced; but not, if the cattle treſpaſs in a field or the like. Such is his opinion.

But others hold, that ſtriking without provocation ſhould be conſidered under the title of aſſault and violence; under the preſent head, it is permitted to ſtrike cattle if they tranſgreſs: in that caſe, their owners, proſecuting the ſtriker, ſhall be amerced. The ſage propounds the tranſgreſſions in the ſecond verſe (LVIII 2).

In the *Retnácara*, "flower gardens and reſerved paſtures," are explained, lands cultivated by a man himſelf for gardens or the like. Or "flower gardens" may ſignify gardens in general; and "reſerved" ſpots, fields of potherbs or the like adjoining to the habitation.

LIX.

Menu:—These rules let a juſt prince obſerve in all caſes of tranſgreſſion by maſters, their cattle, and their herdſmen.

Let

LET a king, excelling in juſtice, obſerve theſe rules above declared, in caſes of tranſgreſſion by maſters and herdſmen not guarding *their cattle*, and in caſes of damage done to grain by cattle.

THE END OF BOOK III.

BOOK IV.

ON THE DUTIES OF MAN AND WIFE.

CHAPTER I.

ON THE DUTIES OF A HUSBAND.

SECTION I.

ON THE NECESSITY OF GUARDING WOMEN.

IS it not impoſſible, that there ſhould be ſuch a title of judicial procedure, as the duties of man and wife, ſince litigation is forbidden, in a controverſy between man and wife, by a text of civil law quoted in the *Mitácſhará* (Book III, Chapter I, v. X)? Of this queſtion CHANDE'SWARA gives a ſolution: 'although a ſuit in the king's court, conducted by the wife and huſband as plaintiff and defendant, be forbidden, yet the king may be privately informed by either of them; and if they deviate from that conduct, which is enjoined to them in regard to each other, they muſt be confined to their own ſole duty, by means of puniſhment and the like *denounced* by the king; elſe *(if they perſiſt in miſconduct,)* they ſhall be chaſtiſed: to intimate that the duties of man and wife are propounded under a title of forensic practice.

BUT the author of the *Mitácſhará*, argues from the law

husband to appropriate the wealth of his wife in certain cases (Book I, v. CCXCI), that, should he dissipate the wealth of his wife in other circumstances than *the pressure of* famine and the like, and refuse to repay it on demand, though he actually possess wealth, a suit between a married couple is in that case, admissible. *But* the litigation of teachers, husbands, and the rest is not laudable either in a moral or a civil view, therefore pupils, wives and the rest should, in the first instance, be discouraged by the king or the court. Such is the implied sense of the verse (Book III, Chapter I, v. X), but, in very important cases, even the *suits of pupils* and the rest may be entertained in the form mentioned.

But others hold, that this verse (Book III, Chapter I, v X) only prevents the recourse of husbands and the rest, to the king's court, for it is declared (Book III, Chapter I, v XI), that wives and the rest, committing faults, may be corrected by their husbands and so forth. But, if husbands and the rest transgress, there is no redress, without application to the king In this text (Book III, Chapter I, v X) the meaning is, "mutual litigation," and thus the independence of wives is incidentally forbidden, to establish that law concerning man and wife, and to denounce punishment for a woman asserting independence.

I

Vrĭhaspati:—This law concerning adultery has been declared; next hear the whole rule of conduct for man and wife, as propounded by me.

"Adultery," corrupting the wife of another. "The whole rule &c.." hear the collection of *rules for* the mode of conduct and behaviour of man and wife towards each other.

II.

Menu:—I now will propound the immemorial duties of man and woman, who must both remain firm in the legal path, whether united or separated.

I will

I WILL declare the prescriptive duties of man and woman, persevering, whether united or separated, in the path of duty enjoined *by the law*, namely, the mutual fidelity of man and wife If the mutual duty of husband and wife be violated by one forsaking the other, the transgressor shall be confined to his duty even by penalties imposed by the king: therefore it is mentioned among *subjects of* judicial procedure. CULLU'CABHATTA.

" IMMEMORIAL," the term is explained in the *Retnacara*, indispensable. " United" by dwelling in the same house or the like, " separated" by residing abroad and so forth. But YA'JNYAWALCYA does not mention the duties of man and wife among forensick matters.

MENU declares the duties of man and woman.

III.

MENU :—DAY and night must women be held by their protectors in a state of dependence; *even* in *lawful and innocent* recreations, being too much addicted to them, they must be kept *by their protectors* under their own dominion.

WOMEN must be ever held in subjection by their husbands or protectors; even in respect of unforbidden recreations, such as matters of beauty and taste, (being *too much* addicted to them,) they must be reduced under their *protectors* own dominion. CULLU'CABHATTA.

CONSEQUENTLY they should not even view paintings, eat mixed food, or wear jewels or the like, without the permission of their husbands or other protectors * If they were in a state of independence, what harm would ensue? NA'REDA declares *the consequence.*

IV

NA'REDA :—THROUGH independence, even women born of

* THE inference, drawn by the compiler, obliges me to alter the version of this text The passage itself, and the gloss of CULLU'CABHATTA, would bear the construction, which Sir W. JONES had put on it. (Chapter 9 v. 2)

noble

noble families would swerve from their duty; hence, the lord of created beings has established their *perpetual* dependence.

" *Noble* families;" honourable families. The *Retnácara.*

" They would swerve from their duty;" *literally* they are utterly lost: they are guilty of disloyalty and other offences; thus, because they know not what is legal and illegal for those who live exactly according to sacred ordinances, (since they are not qualified to study sacred literature;) and because they cannot be instructed, (since they are not in a state of subjection to their husbands, while they assert their own independence;) they would violate the duties of their class and the like, for the temporal gratification of enjoying *the society of* strangers; and be perpetually occupied in viewing paintings and the like. Again; if they dispute the authority of their protectors, and covet independence, they shall be compelled by the king, when informed of their misconduct, to abide by their duty.

Menu specifies those, who are meant by the term " protectors " or husbands and the rest.

V.

Menu:—Their fathers protect them in childhood; their husbands protect them in youth; their sons protect them in age: a woman is never fit for independence.

Let her father guard a woman, before her nuptials; afterwards let her husband guard her; and, on failure of him, let her son protect her: therefore a woman shares not independence at any period whatsoever. " Their husbands protect them in youth:" this is indefinite, for sons and others also protect *young* widows remaining with their children.

Cullú'cabhatta.

VI.

Ya'jnyawalcya, in the first chapter of his code:—Let her father

father guard a maiden; let her huſband guard a married woman: but let her ſon guard her in age; or on failure of theſe, let their kinſmen protect her. In no inſtance is the independence of a woman *allowed*.

" MARRIED;" wedded. " Their kinſmen;" relations of the ſons.

The *Chintámeni* and *Retnácara*.

BEFORE her hand be taken *in marriage*, let her father preſerve her from improper conduct; after that, let her huſband guard her; and after his death, *let* her ſons guard her in old age; on failure of thoſe who have been mentioned, the kinſmen *protect her;* or if there be none, the king (VII) therefore, " in no inſtance is the independence of women allowed."

VIJNYA'NE'SWARA and SU'LAPA'NI.

VII.

Uncertain *—BUT on failure of *kindred on* both ſides, the king is the ruler and protector of a woman.

VIII.

HA'RI'TA:— BY violating their *obligation of* fidelity to one only *huſband*, and by receiving the embraces of a ſtranger, vicious women confound families; *for* a ſon begotten by an adulterer, while the huſband is alive, is a *cunda*, or after his death, a *gólaca*: therefore let the huſband guard his wife from the aſſaults of luſt. If ſhe be loſt *through vice*, the *honor of the* family is forfeited; if that be loſt, the *pure ſucceſſion of* progeny is loſt; through that loſs, the ſacraments of deities and of manes are deſtroyed; thoſe ſacraments being deſtroyed, duty fails; duty failing, *the huſband's* ſoul is loſt; and, his ſoul being loſt, every thing is loſt.

" THEIR obligation of fidelity to one only huſband," the rule or religi-

* The fragment varies little from a verſe ſubſequently cited (XIII 3) T.

ous obligation of *fidelity to* one only husband. "By violating that;" by failing therein, they confound "families" or houses. "Progeny;" sons, grandsons, and other offspring.

The *Retnácara.*

By receiving the embraces of a stranger, women, becoming vicious, confound and mingle families and races; for they introduce the offspring of one man into the family of another. "If the wife be lost," (if she be guilty of violating her duty,) the past generations, father, grandfather and so forth, are defiled; and thence future successive generations of sons and so forth are defiled: by this defilement of progeny, rites *in honour* of deities, and other *religious ceremonies*, are polluted: hence duty is not fulfilled; and the soul, therefore, sinks to a region of torment. Or else; through failure of progeny, the merit of rites performed by a son is not obtained, since the man himself has no male issue: and hence, the purpose of human life is unattained by him; for all the purposes of human life *(wealth, virtue, love of* God, *and final beatitude)* depend *for their accomplishment* on the merit of duty *observed.* Thus others explain the text.

IX.

Menu:—Women must, above all, be restrained from the smallest illicit gratification; for, not being thus restrained, they bring sorrow on both families:

2. Let husbands consider this as the supreme law, ordained for all classes; and let them, how weak soever, diligently keep their wives under lawful restrictions;

3. For he, who preserves his wife *from vice*, preserves his offspring *from suspicion of bastardy*, his ancient usages *from neglect*, his family *from disgrace*, himself *from anguish*, and his duty *from violation.*

Women should, especially, be restrained from the smallest illicit gratifications, which produce any evil consequences: much more should they be restrained

reſtrained from the greateſt; for, by neglect of reſtraint, both the families of their huſbands and fathers experience ſorrow. CULLU'CABHATTA.

THE ſorrow, *brought on both families*, has been deſcribed by HA'RI'TA (VIII); ſhame and diſgrace *are alſo brought on them*.

THEREFORE let huſbands know this rule for guarding wives, in the mode deſcribed by a ſubſequent verſe, to be the firſt of all duties incumbent on men of all claſſes, as well *Bráhmanas*, as others: and let even the blind and the lame be diligent in reſtraining their wives. CULLU'CABHATTA.

" How weak ſoever:" by this it is intimated, that it is *alſo* neceſſary for thoſe who are ſtrong. " Huſbands," or protectors, being expreſſed in the plural number, comprehend fathers and other protectors abovementioned (V).

THUS, becauſe he, who guards his wife, preſerves his offſpring, ſince unmixed and undefiled progeny is obtained; and ſince he preſerves approved ancient uſages, the honour of his father, grandfather, and the reſt of his anceſtry, himſelf, as the parent of pure offſpring, and his duty by means of obſequies performed for him by ſuch offſpring; (for *all* theſe are effected through the purity of his wife;) therefore let him be diligent in guarding her. This may be ſupplied, from what had preceded.

CULLU'CABHATTA.

THUS, the very ſame is ſaid by MENU, which has been delivered by HA'RI'TA.

AFTER mentioning mixed claſſes, PAIT'HI'NASI thus proceeds,

X.

PAIT'HI'NASI:—THEREFORE guard wives, leſt mixed claſſes ſhould ſpring from them.

VIGILANTLY careful, leſt mixed claſſes ſhould ſpring from their wives, let huſbands *therefore* guard them.

XI.

XI.

Smrĭti, * quoted in the *Retnácara*:—CAUTIOUS men! guard your offspring, and do not ſuffer the ſeed of a ſtranger to be ſown in your field: men guard, from the embraces of another, a wife *whom they have married while a* virgin.

THIS obviates *ſuch* a reflection as the following; "they will guard themſelves; why ſhould I *be* diligently *watchful?*"

XII.

VRĬHASPATI:—A WOMAN muſt be carefully reſtrained from the ſmalleſt illicit gratification; night and day ſhe ſhould be guarded by her mother in law and by other venerable matrons.

THIS indicates the ſubjection of women to their huſband's mother and the reſt.

XIII.

NA'REDA:—AFTER the death of her huſband, *the neareſt kinſman on* his ſide has authority over a woman who has no ſon; in regard to the expenditure of wealth, the government of herſelf, † and her maintenance, he has full dominion.

2. IF the huſband's family be extinct, or the kinſmen be unmanly, or deſtitute of means to ſupport her, or if there be no *ſapindas*, a kinſman on the father's ſide ſhall have authority over the woman:

3. But if the kindred on both ſides fail, the king is conſidered as the protector of the woman; he ſhall guard her, and ſhall chaſtiſe her if led away from the path *of virtue*.

* Quoted from A'PASTAMBA. See Book V. ↑ CCLI.
† The preſervation of wealth. a various reading in Book V, Ch. VIII.

" KINSMAN

" KINSMAN on the husband's side;" of his father's or mother's race, in the order of proximity. " Expenditure of wealth;" gift or other alienation of property. " Government of herself," restraint from illicit gratifications. " Maintenance;" means of subsistence. Thus, without his consent, she may not give away any thing to any person; nor indulge herself in matters of shape, taste, smell, or the like: and if the means of subsistence be wanting, he must provide her maintenance. But if the kinsman be " unmanly" (deficient in manly capacity to discriminate right from wrong); or " destitute of means to support her" (if there be no such person able to provide the means of subsistence;) or if there be no *sapindas;* then, any how determining, from her own judgment, on the means of preserving life and duty, let her announce her affinity in *this* mode, " I am the wife of such a man's uncle," and if that be ineffectual, let her recur to her father's kindred. Or, on failure of these, recourse may be had even to her mother's kindred. But, on failure of these, " the king shall chastise her, if led away from the path *of virtue:*" consequently, the king has no right to chastise her, in the first instance, but if she desert her husband or other protector, he is competent to reestablish her guardian's authority; and he shall not impose a fine on account of her deviation from the path of virtue, but on account of her deserting her protector. Again; the maintenance of a woman, who has no kindred, must be assigned by the king. Thus some explain the law.

XIV.

MENU:—REPREHENSIBLE is the father, who gives not *his daughter in marriage* at the proper time; and the husband, who approaches not *his wife* in due season; reprehensible also is the son, who protects not his mother after the death of her lord.

A FATHER, not giving his daughter *in marriage* at the proper time for disposing of her in wedlock, is culpable: since a text ordains that a damsel should be given in marriage before her courses, the proper time for disposing of her in wedlock precedes her puberty. A husband, not approaching his wife in due season, is culpable: and a son, not protecting his mother after the death of her lord, is despicable. CULLU'CABHATTA.

A FATHER, not giving *his daughter in marriage*, and a huſband, not approaching *his wife in due ſeaſon*, are both culpable in regard to thoſe women; ſince the natural paſſion, implanted *in the human race* by the divinity, is not to be endured. Hence, theſe perſons ſhould be puniſhed as offenders: but the woman is not juſtified in miſconduct; for no law permits it. Thus others *comment on the text*.

XV.

VRĬHASPATI: —THE father, who gives not *his daughter in marriage* at the proper ſeaſon, the huſband, who approaches not *his wife* in due ſeaſon, and the ſon, who gives not ſupport to his mother, are criminal, and ſhall be puniſhed according to the law.

IF a huſband approach his wife in due ſeaſon, her deſire of another man, from a wiſh to bear iſſue, is obviated; but, if her paſſions be vehement, ſhe ſhould be approached by her huſband at other unforbidden times.

" AND the ſon, who gives not ſupport to his mother;" from the word " and" it alſo appears indiſpenſable, that the father or huſband ſhould give a maintenance to a daughter or wife. Thus ſome expound the law.

XVI.

VASISHT'HA:—As often as a virgin's courſes recur, who deſires and demands marriage with a man of equal claſs, ſo many beings are deſtroyed by the fault of her father and mother: thus is the law declared.

XVII.

PAIT'HĪNASI:—BEFORE her breaſts are prominent, a girl ſhould be given in marriage: both he, who gives *a damſel in marriage* after *her* menſes have appeared, and he, who receives *ſuch a damſel*, ſink to a region of torment; and the father, paternal grandfather and great grandfather of *each* are born again in ordure: therefore ſhould a damſel be given in *marriage* before her menſes appear. IF

If her father be dead, it ſhould be underſtood, that the ſucceſſor to his wealth, or other competent perſon, *muſt give her in marriage.*

XVIII.

YA'JNYAWALCYA :— If there be no perſons *competent* to give her in marriage, let the damſel herſelf chooſe a ſuitable bridegroom.

XIX.

MENU : — THE huſband, after conception by his wife, becomes himſelf an embryo, and is born a ſecond time here below ; for which reaſon the wife is called *jáyá*, ſince by her *(jáyaté)* he is born again.

THE huſband, impregnating his wife, aſſumes the ſtate of an embryo, and is born again of her in the perſon of his ſon ; that is the very reaſon for calling a wife *jáyá*, ſince by her he is born again.

CULLU'CABHATTA.

THE meaning is, that the word is formed with a termination in the ſenſe of containing ; " ſhe, in whom he is again generated."

WHAT is deduced from this ? The ſage declares *the induction.*

XX.

MENU :—Now the wife brings forth a ſon endued with ſimilar qualities to thoſe of the father ; ſo that, with a view to an excellent offſpring, he muſt vigilantly guard his wife.

BECAUSE it is declared by the law, that ſhe produces a ſon ſimilar to the father, whether legitimate or illegitimate, (an excellent ſon, if ſhe ſubmitted to an excellent man ; and a bad ſon, if ſhe ſubmitted to a vicious man ;) therefore, with a view to excellent offſpring, he muſt vigilantly guard his wife.

CULLU'CABHATTA.

THUS

THUS the expreſſions of MENU and HA'RI'TA were ſuitable: "he preſerves his offspring *from ſuſpicion of baſtardy*" (IX 3); and, "*the pure ſucceſſion of* progeny is loſt *by her miſconduct*" (VIII). And the inferible ſenſe that a wife ſhould be guarded with a view to excellent offspring.

XXI.

SANC'HA and LIC'HITA:—WOMEN bring forth ſons endued with ſimilar qualities to thoſe of the man, on whom their thoughts are fixed in the ſeaſon of paſſion; as a black calf ſprings from a black bull, and a white calf from a white bull. But the influence of the female is great, ſince mixed claſſes *thence* originate.

"THENCE" *(from females)* muſt be ſupplied.

The *Retnácara.*

"THE influence of the female is great;" the influence of the wife is greater than that of the huſband. Thus, although the huſband be endued with excellent qualities, the offspring may be vitiated through the faults of the wife.

XXII.

MENU:—SUCH *women* examine not beauty, nor pay attention to age, whether *their lover be* handſome or ugly, they think it is enough that he is a man, and purſue their pleaſures.

2. THROUGH their paſſion for men, their mutable temper, their want of ſettled affection, and their perverſe nature, (let them be guarded in this world ever ſo well) they ſoon become alienated from their huſbands.

THEY do not examine deſirable figure; nor regard youth or age: but, whether a man be handſome or ugly, they think his manhood ſufficient, and receive his embraces. Since, at ſight of a man, they deſire fruition, ſince their

their temper is not conſtant, and ſince they are naturally void of ſettled affection, however diligently guarded in this world, they ſoon become alienated from their huſbands, leaning to diſloyalty.

CULLU'CABHATTA.

No man ſhould be confident, that, on account of his youth and beauty, a woman will not recur to any other man, old or ugly. A woman has no ſettled tenderneſs even for her family and the like. The cauſe is mentioned: her temper is naturally mutable; and, through want of ſettled affection for her huſband, ſhe fails in the ſubmiſſion due to him.

XXIII.

MENU:—YET ſhould their huſbands be diligently careful in guarding them; well knowing the diſpoſition, with which the lord of creation formed them.

KNOWING the diſpoſition implanted in them when the univerſe was framed by the creator, and which diſpoſition is deſcribed in the two preceding verſes (XXII), let their huſbands *therefore* apply the utmoſt attention to guard them. CULLU'CABHATTA.

DISLOYAL paſſion is natural to them, and ſprings not *in particular inſtances* from *peculiar* defects; and this fault *in their diſpoſitions* ſhould not be imputed to them: it is derived from nature; and, therefore, they ſhould not be contemned merely for their mutable temper.

XXIV.

MENU:—MENU alloted to ſuch women a love of their bed, of their ſeat, and of ornament, impure appetites, wrath, weak flexibility, deſire of miſchief, and bad conduct.

MENU allotted to women, at their firſt creation, a propenſity to their bed, to their ſeat and to ornaments, impure appetites, wrath, weak flexibility, miſchievous inclinations, and ill behaviour; therefore they muſt be diligently guarded. CULLU'CABHATTA.

THE *term, explained* "weak flexibility," *may signify* crooked proceeding, *or fraud.* Thus MENU declares their defects natural.

XXV.

MENU:—Women have no business with the texts of the *Véda*; thus is the law fully settled: having, therefore, no evidence *of law*, and no *knowledge of expiatory* texts, sinful women must be *as foul as* falsehood itself; and this is a fixed rule.

NONE of the ceremonies, at the birth of children and so forth, are performed for females with holy texts. This limitation of the law is fully settled. Hence, through the want of solemn rites accompanied with holy texts, they are not devested of sin; through the want of evidence of law and scripture, they are not acquainted with the system of duties; and having no expiatory texts, *(that is,* being incapable of expiating a sin actually committed, since they are debarred from the silent repetition of expiatory texts;) women are as foul as falsehood *itself.* Such is the restriction of the law. Therefore a woman should be vigilantly guarded; this is implied in the text.

CULLU'CABHATTA.

"HAVING no evidence of law;" wanting that evidence which induces steadiness in engagements and the like. "Falsehood:" their conduct is tainted with falsehood.

The *Retnácara.*

THE text shows *a* further *cause of the* evil *disposition* of women naturally ill disposed: at their birth and so forth, rites are not celebrated with holy texts; hence they are not sanctified. "Having no evidence *of law;*" or, otherwise interpreted, having no organs of sense *(nirindriyáh):* by this it is intimated, that they have no knowledge of what is lawful and unlawful, although they have visual, mental and other faculties. "And no texts;" by this is denoted their exclusion from the study of the *Védas.* From this cause, though *physically* existent, they are *morally* non-existent

or

or falſe beings. It follows, that women ſhould be avoided, ſince they are thus vile: and it is ſhown, that they cannot, of themſelves, preſerve virtue, or expiate ſins. Thus others expound the text.

XXVI.

MENU:—To this effect many texts, which may ſhow their true diſpoſition, are chanted in the *Védas*: hear now their expiation for ſins.

IT has been ſaid, that an inclination to diſloyalty is natural to women; on this point, he cites the authority of the *Véda*: many revealed texts, which ſhow the true diſpoſition of women, and their diſloyal propenſity, are read in the *Védas*: hear ſuch of thoſe texts, as are ſolemn expiations for diſloyalty. Since only one text is quoted,* the meaning is, "hear the text:" and the plural number is uſed for the ſingular, under the general rule; "any inflection ſupplies the place of another *in the ſcriptures and in the works of ſages.*"

CULLU'CABHATTA.

"TEXTS;" paſſages of holy writ. "The *Vedas*;" the ſcriptures. "Their true diſpoſition;" their natural temper. Of thoſe texts of the *Véda*, hear that, which is an effectual expiation for mental diſloyalty; that you may know the true diſpoſition of women. The text ſhould be ſo ſupplied.

The *Retnácara*.

XXVII.

DACSHA:—LIKE a leech, all women, though won by ornaments, apparel and furniture, ever exhauſt their huſbands.

2. YET a leech ſucks a man's blood alone, and *ſo far* is *more* reſpectful; but the other draws wealth, gain, fleſh, ſeminal juices, ſtrength and pleaſure.

* Chapter 9, v. 20.

3. IN

3. In infancy she is timid, in youth confident; but in age a woman shows *outward* respect to her husband, as *if he were* a king.

4. Left to the guidance of her own will, and unrestrained by affection, she afterwards becomes ungovernable, as a neglected disease *becomes incurable.*

"Her own will;" her own desires. "Ungovernable;" highly mischievous. The *Retnacara.*

Though won by ornaments, apparel and furniture, she exhausts her husband, as a leech sucks the human body. Therefore, as a leech, steadily adhering to the body of a man, sucks and drinks his best blood, so do women act. He adds to the illustration: since a leech sucks the blood alone, it is respectful in comparison with women; but these draw wealth and the rest of six things mentioned.

In infancy she is fearful; in youth she asserts equality; in age she respects her husband no more than grass, for *his* youth is past. On the other reading *(nrĭpa vat* like a king, instead of *trĭna vat*, like grass) the sense is this; that she herself may be esteemed even without youth *to render her amiable*, she honours her husband, like a king, with affected respect.

Conducting herself according to her own will, and unrestrained by the apprehension of violating affection, a woman deviates from the path of duty, (she follows not that, which is ordained to be the path of virtue;) as a disease, such as a fever or the like, suffered to remain in the body, and, through tenderness, unopposed by a cooling regimen, becomes incurable, through the want of medicaments.

XXVIII.

The *Rámáyana*:—To women not any man is *solely* dear, nor is any one hateful; they embrace every man, as a creeper, growing in the forest, *clings to every tree within its reach.*

Therefore

THEREFORE it ſhould not be truſted, that there is no apprehenſion of a woman's deſiring ſome man who is *apparently* hateful to her. She muſt be guarded from all.

XXIX.

The *Mahábhárata*:—WOMEN, though born in noble families, *themſelves* beauteous, and married *to worthy huſbands*, remain not within the bounds of duty; this, NA'REDA, is the fault of women:

2. From the want of a motive *for deviation*, or through fear of the people or of their kindred, unbridled women may remain within the bounds of duty, *faithful* to their huſbands;

3. But neither through fear *of moral law*, nor through ſevere reprehenſion, nor from any motive of *regard for* wealth, nor on account of their connexion with kindred and family, are women conſtant to their huſbands.

4. MATRONS envy women, who live by proſtitution, the *bloom of* youth they poſſeſs, and the food and apparel they receive.

5. THOUGH men be lame, divine ſage! or otherwiſe contemptible, there is not any man in this world, great ſage! inſufferable to women:

6. If they have no poſſible acceſs to men, *O thou inſpired by* BRAHMA'! they ſeduce each other; truly they are not conſtant to their huſbands:

7. From not finding men, or through fear of their kindred, or apprehenſion of ſtripes or confinement, they guard themſelves:

8. But fire is not fatiated with wood, nor the ocean with rivers, nor death with all beings, nor woman with man.

9. This, divine sage! is another hidden quality of all women, at the very sight of a handsome man, the heart of a woman melts with desire.

10. Women bear not much *affection to* their husbands, though giving them what they desire, doing what they wish, and protecting them from danger:

11. They do not so much value the gratification of their wishes, abundance of ornaments, or hoards *of wealth*, as they do sensual pleasures.

12. Final destiny, wind, death, the infernal regions, the fire of the ocean, the edge of a razor, poison, venomous serpents and *devouring* fire, all united are *no worse than* women. *

In fact all these texts, describing the wickedness of women, only imply, that confidence should not be placed in them, and show, that they are sinful from their want of knowledge to distinguish what is lawful and unlawful But, at particular times, men also follow implicitly the dictates of lust Accordingly the *Vishvabhuta* expresses, "all creatures, overcome by lust and wrath, &c" and at times, women are found most loyal and constant, as Savitri and others

* It would be very easy to find exceptions to these texts, on which it is impossible to dwell: these sentences do away the whole argument, as the texts quoted in the next section particularly XCIV do away the sinful censure T.

SECTION II.

ON THE METHOD OF GUARDING WOMEN.

If *then* women regard not their protectors, how can they be preserved from vice? In answer to this question, MENU declares the expedients by which they may be guarded.

CHANDE'SWARA

XXX.

MENU:—No man, indeed, can wholly restrain women by violent measures; but, by these expedients, they may be restrained:

2. Let the husband keep his wife employed in the collection and expenditure of wealth, in purification and *female* duty, in the preparation of daily food, and the superintendence of household utensils.

"HOUSEHOLD utensils," *or it may mean female ornaments, as bracelets,* earrings, and the like.

No man is able *wholly* to preserve women from vice, even by forcible restraint, for still they will manifest disloyalty But, by these means, he may restrain them. The *sage* mentions those means (XXX 2) by keeping a wife employed in the accumulation and disposal of wealth, in the purification of effects and of *her own* person, in the care of the *sacrificial* fire and the like, in the preparation of food, and in the superintendence of household utensils, as beds, seats, jars, earthen vessels, and the like.

CULLU'CABHATTA

OTHERS

OTHERS explain "purification and *female* duty," sweeping the house and cleaning the vessels used at meals and the like. "Preparation of food;" and the presenting of it and so forth. Occupied in such offices, their minds are calm; hence, and from want of leisure, every wish for commerce with other men is prevented. This artifice MENU declares to be an expedient for restraining women.

XXXI.

VRĬHASPATI:—THE keeping women employed in the receipt and expenditure of wealth, in the preparation of food, in the superintendence of the household utensils, in purification, and in the care of the *perpetual* fire, is declared to be the mode of restraining women.

"IN purification;" or in the business of cleanliness, as sweeping the house and the like. "In the care of the fire;" in keeping it for the daily oblations of those who maintain a perpetual fire.

XXXII.

MENU:—BY confinement at home, even under affectionate and observant guardians, they are not secure; but those women are truly secure, who are guarded by their own good inclinations.

GUARDIANS, who are both affectionate and observant.

The *Retnácara.*

THOUGH confined at home, even under persons, who are both affectionate and authoritative, those women are not secure, who, from their evil disposition, guard not themselves; but they, who, excelling in virtue, guard themselves, are truly secure. Therefore a rule *of conduct* should be prescribed to them by announcing the attainment of heaven through the practice of virtue, and punishment in hell for habits of vice. This is declared to be the chief expedient for restraining women.

CULLU'CABHATTA.

XXXIII.

XXXIII.

MENU:—WHATEVER be the *qualities of the man*, with whom a woman is united by lawful marriage, ſuch qualities even ſhe aſſumes; like a river *united* with the ſea.

2. ACSHAMA'LA', a woman of the loweſt birth, being thus united to VASISHT'HA, and SA'RANG'I, being united to MANDAPA'LA, were entitled to very high honour:

3. Theſe, and other females of low birth, have attained eminence in this world by the reſpective good qualities of their lords.

A WOMAN, though *naturally* ſinful, imbibes virtue from her intercourſe with a huſband who gives the example of it, and ſhe becomes deſerving of reſpect; but a woman, even though naturally virtuous, becomes vicious by intercourſe with a vicious man. *He illuſtrates this by a compariſon;* as ſweet water, falling into the ocean of ſalt water, becomes ſalt, or falling into the ocean of milk, *becomes milk*, and ſo forth. ACSHAMA'LA' (XXXIII 2) was the name of a certain woman married to VASISHT'HA: and SA'RANG'I was a female bird, married to a ſage named MANDAPA'LA.

"THESE, and other females;" *in the plural number inſtead of the dual:* on this CULLU'CABHATTA obſerves, that, although two only are here celebrated, "theſe" is expreſſed in the plural number, becauſe thoſe two are only intended as inſtances. Others think, it is expreſſed in the plural to convey the ſenſe of "and the reſt;" the meaning therefore is, "theſe two and the reſt, as well as other females."

XXXIV.

MENU:—THUS has the law, ever pure, been propounded for the civil conduct of men and women: hear, next, the laws concerning children, by obedience to which may happineſs be attained in this and the future life.

" CIVIL conduct of men and women;" the protection to be given by a man to a woman. Or the conduct to be observed in this world; that is, the protection afforded by men to women. Happiness may be attained after death, since heaven is attained; and in this life, by the *very* preservation *of a wife*, and so forth.

IF women be naturally vicious, and be guarded with *such* difficulty, should not marriage be avoided? To obviate this doubt, he declares the production of children to be the motive of marriage.

XXXV.

MENU:—WHEN good women, united with husbands in expectation of progeny, eminently fortunate and worthy of reverence, irradiate the houses of their lords, between them and goddesses of abundance there is no diversity whatever.

2. THE production of children, the nurture of them when produced, and the daily superintendence of domestick affairs are peculiar to the wife.

3. FROM the wife alone proceed offspring, good household management, solicitous attention, most exquisite carefsses, and that heavenly beatitude, which she obtains for the manes of ancestors, and for *the husband* himself.

ALTHOUGH their defects have been declared for the sake of *showing the necessity of* their being guarded; yet, as a remedy is possible, these women, married for the sake of producing children (who are greatly beneficial *to their parents*), become the cause of their husband's partaking of eminent prosperity, are entitled to reverence shown by gifts of apparel, ornaments and the like, and render their own houses pure. In such houses, women and goddesses of abundance are equal; there is no diversity whatever: as a house, unvisited by the goddess of abundance, does not flourish, so a house, deprived of women, thrives not. CULLU'CA BHATTA.

" GODDESS

" Goddess of abundance;" the term may signify either beauty, or the goddess Lacshmì. The production of children and the purification of the house are not the only purposes of marriage: the sage mentions others (XXXV 2).

The construction is this; " the daily business of civil conduct is peculiar to women."

The *Retnácara.*

The production of children, the nurture of them when born, and the daily superintendence of worldly affairs (such as the entertainment of guests, kinsmen and friends), are peculiar to women.

Cullú'cabhatta.

The sage enumerates the several qualities of women, both those already noticed, and those which had not been mentioned (XXXV 3).

The production of children, though already mentioned, is repeated to show, that women are worthy of reverence; *that* and offices, in which religious duty is concerned (as the care of the perpetual fire and the like), solicitous attention *(personal* attendance), exquisite carefses, and heaven obtained for his ancestors and himself by the production of children; all these proceed from the wife.

Cullú'cabhatta.

But we thus explain the text; offspring, the nurture of children, and exquisite carefses *proceed from the wife*, as mentioned in the *Cálicá purána.*

" The wife affords delight and male offspring."

From her proceeds heavenly beatitude obtained through the rites to be performed in the order of a householder; there is not, consequently, any needless repetition. Thus a text of law, quoted in the

Udváha tatwa, expresses;—" The wife call not the habitation

alone

alone the home, *for* the wife is deſcribed by that name *(gṛi-ha)*; with her indeed, a man attains all the purpoſes of human life.'

And another text, inſerted in the ſame compilation, declares incapable of ſacrificee a man, who has no wife and has not paſſed the age of forty-eight years;

" Until he have attained the age of forty-eight years, a man, who has neither ſon nor wife, is diſqualified for performing the ſacrifice."

XXXVI.

Yá'jnyawalcya:—Perpetuated offspring and a heavenly abode are obtained through a ſon, a grandſon and a great grandſon; therefore ſhould virtuous wives be reſpected, cheriſhed and well guarded.

XXXVII

The *Mahábhárata*:—These women, *graced* with the name of goddeſſes of abundance, ſhould be treated with honour by him, who deſires wealth: Bharata! a lovely woman, reſtrained from vice, is a goddeſs of abundance.

Menu declares them " worthy of reverence," the *Mahábhárata* declares, they " ſhould be treated with honour," and ſubjoins a motive for treating them with reverence.

XXXVIII.

The *Mahábhárata*:—Where females are honoured, there the deities are pleaſed, but where they are unhonoured, there all religious acts become fruitleſs.

2. When female relations are made miſerable, even then is that family annihilated; *for* the houſes, on which they pronounce

pronounce a curſe, *periſh*, as if deſtroyed by a deadly ſacrifice:

3. *Thoſe houſes*, king of the earth! neither flouriſh nor increaſe, which are not graced by the goddeſs of abundance.

"FEMALE relations;" ſiſters, and women of a family.

AMERA.

THE meaning is, that houſes, on which female relations pronounce a curſe (on which they pronounce an imprecation in conſequence of ſuffering from the want of a ſuitable maintenance and the like), are extirpated.

XXXIX.

MENU:—WHERE females are honoured, there the deities are pleaſed; but where they are diſhonoured, there all religious acts become fruitleſs.

2. WHERE female relations are made miſerable, the family of him, who makes them ſo, very ſoon wholly periſhes; but, where they are not unhappy, the family always increaſes.

3. ON whatever houſes the women of a family, not being duly honoured, pronounce an imprecation, thoſe houſes, with all that belong to them, utterly periſh, as if deſtroyed by a ſacrifice for the death of an enemy.

4. LET thoſe women, therefore, be continually ſupplied with ornaments, apparel, and food, at feſtivals and at jubilees, by men deſirous of wealth.

"FEMALE relations;" the women of a family, as ſiſter, ſon's or nephew's wife, and the reſt.

The *Retnácara*.

"ARE made miſerable;" are made wretched from the want of maintenance or the like. "Periſh, as if deſtroyed by a ſacrifice;" by a fire *lighted for a ſacrifice to be made* for the death of an enemy: a rhetorical ſimile.

XL.

MENU:—IN whatever family the huſband is contented with his wife, and the wife with her huſband, in that houſe will fortune be aſſuredly permanent.*

XLI.

THE *Mahábhárata*:—*Women* muſt be honoured and adorned by their own fathers and brethren, and by the fathers and brethren of their huſbands, if they ſeek abundant proſperity.

XLII.

MENU:—*Married women* muſt be honoured and adorned by their fathers and brethren, by their huſbands, and by the brethren of their huſbands, if they ſeek abundant proſperity.

" BLOSSOMS," to be placed in the treſſes of their hair.

IN the third chapter of his work, on the ſubject of an embryo in the third month of pregnancy, YA'JNYAWALCYA has the following text.

XLIV.

YA'JNYAWALCYA:—BY not gratifying *the* longings *of a pregnant woman*, the embryo ſuffers injury, becomes deformed, or even periſhes; therefore ſhould women be treated with affection.

FROM what has been ſtated, it appears, that reverence muſt neceſſarily be ſhown to a wife, ſiſter, and the reſt, by gifts of food and clothes, and of ornaments, beſtowed, according to his ability by her huſband, her brother, or ſome wealthy relation, as the caſe may be: this is a ſettled rule. If it be not done, the omiſſion is puniſhed with misfortune; for texts ſhow, that the family periſhes: therefore women *ſhall not in ſuch caſes* apply to the *king*; but he being privately informed, muſt compel their relations to ſupply them with food and the like; and the rule muſt be ſettled, as in the ſupplementary chapter *of the code of law*.

XLV.

MENU:—SHOULD a man have buſineſs abroad, let him aſſure a fit maintenance to his wife, and then reſide *for a time* in a foreign country; ſince a wife, even though virtuous, may be tempted to act amiſs, if ſhe be diſtreſſed by want of ſubſiſtence:

2. While her huſband, having ſettled her maintenance, reſides abroad, let her continue firm in religious auſterities, but, if he leave no ſupport, let her ſubſiſt by *ſpinning and other* blameleſs arts. *

BUT, if her huſband go to a diſtant abode, without providing for her ſub-

* See v. CXVI.

ſiſtence,

ſiſtence, clothing and the like; let the woman live by ſpinning and other blameleſs arts.

CULLU'CABHATTA.

XLVI.

MENU:—WHEN twice-born men take wives, both of their own claſs and others, the precedence, honour, and habitation of thoſe wives, muſt be ſettled ſolely according to the order of their claſſes.

WHEN twice-born men marry wives, both of their own claſs and of other tribes, then the precedence in regard to reſpectful language and ſuperiour ſhare of the heritage, honour ſhown by gifts of apparel, ornaments and the like, and habitation or preferable apartment of thoſe wives, muſt be ſettled according to the order of the claſſes. CULLU'CABHATTA.

OTHERS hold the precedence to be that, which is announced in the ſubſequent text; namely, the duties of the eldeſt wife, perſonal attendance and the like.

XLVII.

MENU:—To all ſuch married men, the wives of the ſame claſs only (not wives of a different claſs by any means) muſt perform the duty of perſonal attendance, and the daily buſineſs relating to acts of religion.

ATTENDANCE on the perſon of her huſband (as preſenting food to him and the like), buſineſs relating to acts of religion (as the diſtribution of alms and the like, the entertainment of gueſts, and the care of the ſacrificial utenſils), and other daily buſineſs, the wives of the ſame claſs only muſt perform for twice-born men, not wives of a different claſs by any means.

CULLU'CABHATTA.

DISPUTES between his wives muſt be thus reconciled by the huſband: and thus ſuppoſes, that he has a wife of the ſame claſs with himſelf.

XLVIII.

XLVIII.

YAJNYAWALCYA —IF he have a wife of equal claſs, let him not employ another in buſineſs relating to acts of religion, *but*, if there be ſeveral wives of his own claſs, ſuch duties are lawfully performed by no other than the eldeſt.

IF there be a wife of equal claſs, he ſhall not employ another in buſineſs relating to religious duty, but if there be ſeveral wives of his own claſs, then he ſhall not employ any other than the eldeſt of them, *in ſuch offices* hence, if the firſt married wife be alive, ſhe muſt be preferred in all matters relating to acts of religion

CHANDESWARA and VIJNYA'NESWARA.

IF a wife of equal claſs be alive, he ſhall not employ one of unequal claſs in the care of the ſacrificial fire and the like, if there be ſeveral wives of his own claſs, he muſt ſo employ the eldeſt alone Another caſe is mentioned in the *Ch'handoga periſiſhta* (L 3) *

SULAPANI.

SOME remark, that two or three caſes might be eſtabliſhed, if the youngeſt wives be pre eminent in virtue, or if ſeveral were married at the ſame time † But the uncertainty, as to the rule to be followed *in ſuch caſes*, is not liable to any objection for the text only directs honour to be ſhown as enjoined, and the reſt is mentioned in another place

XLIX

VISHNU.—IF many wives of his own claſs be living, with the eldeſt alone ſhould the huſband conduct buſineſs relating to acts of religion, even though his younger wives be

* The text is cited anonymouſly at full length but differing from another text in one word only and that not affecting the ſenſe I refer the citation to that other text ſubſequently quoted from CATYAYANA T

† By eldeſt wife is meant not the eldeſt woman but the wife firſt married and after her death the next married has not a right exactly to the ſame precedence becauſe ſhe is not the wife married *from a ſenſe of duty* this will be evident in the ſequel T

dearer to him; but if there be no wife of equal claſs, the buſineſs may, in a caſe of diſtreſs, be executed by that wife only, who is of the claſs next below him: yet let not a twice-born man ever *perform holy rites* with *the aid of* a *Súdrá* wife.

If there be no wife equal in claſs, the buſineſs relating to acts of religion may be accompliſhed by her, who belongs to the claſs next below him. This is alſo intimated by Menu; "the precedence muſt be ſettled according to the order of the claſſes" (XLVI). "But let not a twice-born man ever perform holy rites with the aid of a *Súdrá* wife;" this denotes, *that he may not do ſo*, even though he have no wife of any other claſs but that of the *Súdrá*: elſe the terms of the text would be unmeaning. To fulfil their duty, twice-born men ſhould marry women of twice-born claſſes: and, from the expreſſion, "the buſineſs may, in a caſe of diſtreſs be executed by a wife of the claſs next below him;" and from that which immediately follows, "but let not a twice-born man ever &c;" it is deduced, that a *Bráhmana*, in the utmoſt diſtreſs, may even employ a wife of the commercial claſs in ſuch offices. Thus ſome expound the law.

L.

Cátyáyana, quoted in the *Ch'handóga periśiſhṭa*: — Let him, who has many wives, employ one of equal claſs in the care of the ſacrificial fire, and in attendance on himſelf; but, if there be many ſuch, let him employ the eldeſt in thoſe duties, provided ſhe be blameleſs;

2. Or he may employ, in ſuch offices, any one of them, who is mother of an eminent ſon, who is obedient to his commands, affectionate, capable of good management, kind in diſcourſe, and well diſpoſed;

3. Or, without partiality, he may perform the rites *of religion* with all his wives ſucceſſively, in periods ſettled according to *their reſpective* precedence; or ſettled of his own authority to the beſt of his knowledge. 4. We

4. We know, that the precedence of women originates in fortunate deſtiny; nor can a huſband, by a ſlight ſhow of reverence, content wives of twice-born claſſes:

5. That woman gains a fortunate deſtiny, who, conſtantly obſequious to her huſband, worſhips Bhav'anì in this world, with many acts of auſterity, and reverently attends the ſacrificial fire.

If there be many of them, and the eldeſt wife be blameleſs, he muſt employ her in matters relating to acts of religion. But, if the eldeſt wife be blamable, then, ſince there is no certainty *which ſhould be employed* among ſeveral wives equal in claſs, it ſhould be determined by the ſecond rule (L 2).

The *Retnácara.*

"Mother of an eminent ſon;" one, who has borne a blameleſs ſon. If the eldeſt of all the wives be cenſurable, and the reſt be equal *in merit*, they ſhould, according to circumſtances, be employed in ſuch duties in daily ſucceſſion: this ſome think to be fully intended in the *Retnácara.*

He, who has wives both of his own claſs and of others, ſhould aſſign, *to* the wife of equal claſs, the care of the *ſacrificial* fire, the hoſpitable entertainment of ſtrangers, and attendance on himſelf; but, if there be many of his own claſs, to the eldeſt wife, provided ſhe be not diſabled by ſickneſs, nor chargeable with a vicious diſpoſition or the like. On another reading *ſagni ſiſhṭyádi ſuſrúſhám*, inſtead of *agni ſiſhṭátma ſuſrúſhám*, care of the *ſacrificial* fire and attendance on himſelf) the ſenſe is, attention to his commands in reſpect of ſupplying the fire and the like, and other attendance on her huſband.

Or he may conſtantly employ, in the care of the ſacrificial and other offices relating to acts of religion, and in attendance on his own perſon, that wife, among thoſe of equal claſs, who is mother of a ſon; *or*, avoiding partiality, he may perform the daily rites *of religion* with the aſſiſtance of his wives in regular ſucceſſion, allowing five days and ſo forth to each according to their reſpective precedence; or diſtributing periods of his own authority,

and

and to the beſt of his knowledge. The precedence of women depends on their fortunate deſtiny; hence the precept for employing the eldeſt wife in *perſonal* attendance ſuppoſes her eminently fortunate: and that fortunate deſtiny has been obtained by obedience to her huſband, by many auſterities, by worſhip of BHAVA'NI', and by attention to the ſacrificial fire, in a former exiſtence. Therefore a woman, though eminently fortunate in her preſent exiſtence, ſhould pay adoration to BHAVA'NI' and ſo forth, for the ſake of auſpicious fortune in a future birth. This ſtates the conduct incumbent on women; the preceding texts (L 1. 2. and 3.) had ſtated the conduct incumbent on the huſband.

The *Periśiſhta Pracáśa*.

"PRECEDENCE originates in fortunate deſtiny;" this ſuppoſes ſuperiority in virtue, ſince that is expreſſed in the laſt verſe. The woman of equal claſs is ſuperiour to all the reſt; for the approbation of the law prevails over the affection of the huſband. "Not by ſlight ſhow of reverence &c:" thus, ſince what is executed by an auſpicious wife, is beſt executed, ſhe is beſt qualified for offices pertaining to acts of religion. Thus others expound the law.

LI.

DACSHA:—THE firſt is the wife married from a ſenſe of duty; the ſecond promotes ſenſual gratification: ſenſible, not moral, effects proceed from her.

2. THE firſt wife is called the wife whom acts of duty concern, provided ſhe be faultleſs; but, if ſhe be faulty, there is no offence in employing another wife endued with excellent qualities.

"THE wife, whom acts of duty concern;" who officiates in acts of religion, and ſo forth. From the ſecond wife proceed ſenſible effects (ſubject to the teſt of ſenſation, as the preſent gratification of careſſes and the like); not moral *effects*, or the laſt ſolemn rites and the reſt of the *acts relating* to another world and ſo forth. But moral conſequences follow the production of

a ſon; that however in a ſucceſſive order, *by the birth of a ſon from the ſecond wife, if the eldeſt wife be childleſs.* From this text it appears, that the ſeniority, noticed in former texts (XLVIII and XLIX), is ſettled, not according to age, but according to the priority of nuptials. This is the principal caſe; he mentions a ſecondary one (LI 2): if the eldeſt wife be faulty, there is no offence in employing another on buſineſs relating to acts of religion; therefore another wife, endued with excellent qualities, ſhould be employed.

THE wife deſcribed in the *Ch'handóga periśiſhta* (L 2) ſhould be conſidered as the wife endued with excellent qualities; if there be no ſuch grounds for ſelection, it may be ſettled as directed in the *Ch'handóga periśiſhta* (L 3). Since the *Ch'handóga periśiſhta** completes the extracts of the *Sáma-véda*, the adjuſtment by ſucceſſive daily periods ſhould be admitted without queſtion by *all* followers of the *Sáma-véda*; for, were it queſtioned *by any perſon*, it muſt be admitted, even though directed by another *than the particular* Śác'há, *by which that perſon is governed.* For it is ſaid, "what is enjoined in their own Śác'hás, or declared by another, but not inconſiſtent with their own, ſhould be followed by the wife, as the practice of maintaining a perpetual fire and the like."

LII.

MENU and VISHNU, after mentioning a Śúdrá wife:—HIS ſacrifices to the gods, his oblations to the manes, and his hoſpitable attentions to ſtrangers, muſt be ſupplied principally by her; but the gods and manes will not eat ſuch offerings; nor can heaven be attained by ſuch hoſpitality.

OF him, whoſe ſacrifices to the gods, whoſe oblations to the manes, whoſe hoſpitable attentions to ſtrangers, are ſupplied by a wife of the ſervile claſs, the gods and manes will not eat the offerings; nor does he attain heaven.

The Rat'nácara.

SINCE the gods and manes eat not his offerings, he does not attain heaven; and his daily rites are unfulfilled. Although gueſts eat the food with a cor-

* The meaning of the name is "conſummation, or completion, of the followers of the *Sama véda*." T.

poreal mouth, ſtill the duty of hoſpitable attention is not thereby truly fulfilled: conſequently he attains not heaven. If any perſon, through ignorance, follow a path repugnant to theſe rules, the king, any how informed of it, ſhould inveſtigate the matter and reſtrain him. This conſtruction muſt be admitted; elſe the text (XLVI), and others on the ſame ſubject, are uſeleſsly placed under the title of judicial procedure, in the inſtitutes of MENU.

LIII.

DACSHA:—DWELLING in a houſe, *as a houſeholder*, is *practiſed* for the ſake of happineſs, and that happineſs depends principally on the wife; ſhe is *indeed* a wife, who is attentive to precept, obedient to command,

2. And obſequious *to her lord*, who never ſpeaks unkindly, who is careful in houſehold management, virtuous, and prolifick: a woman endued with ſuch qualities is, no doubt, a goddeſs of abundance.

3. SHE, whoſe temper is cheerful, who is ever attentive to her place, reſpectful and affectionate to her huſband, is *truly* a wife; any other is uſeleſs:

"FOR the ſake of happineſs;" ſince happineſs may be attained in another order beſides thoſe of devotion. "Who never ſpeaks unkindly;" who avoids harſh language. "Her place;" her habitation, bed, ſeat and the like. "Reſpectful," reverent. This details the qualities intended by the expreſſion, "endued with excellent qualities."

LIV.

VYASA:—LET the wife of a virtuous man riſe before him, be diligent in houſehold management, repoſe on an humbler bed and ſeat, avoid unkind diſcourſe, and purſue his benefit.

AFTER the huſband and wife have ſlept through the night, let her riſe firſt at

at dawn of day; let her not require an equal bed and ſeat; and let her perform that, by which her huſband may be benefited.

LV.

DACSHA:—WITH ſorrow does he eat, who has two contentious wives; diſſention, mutual enmity, meanneſs and pain *diſtract his mind.*

BUT, although he have two wives, if they be complacent, his food is taſted with pleaſure; no ſtriſe or contention exiſts; no mutual enmity; no endurance of pain; no ſorrow.

LVI.

MENU:—FOR a whole year let a huſband bear with his wife, who treats him with averſion; but, after a year, let him deprive her of her ſeparate property, and ceaſe to cohabit with her.

WITH his wife, who has contracted a diſlike of her huſband, let him be patient for a whole year; but, after that period, taking back from his wife, who treats him with averſion, the ornaments and other property given by himſelf, let him ceaſe to approach her; but mere food and clothes muſt be allowed to her.

CULLU'CABHATTA.

THAT her hatred ſhould be endured for a whole year, is approved; within that period, a huſband, propoſing to forſake her, ſhould be prevented by the interpoſition of friends and by other means of conciliation: but, after a year, there is no offence in his forſaking her.

LVII.

MENU:—SHE, who neglects her lord, though addicted to gaming, fond of ſpirituous liquors, or diſeaſed, muſt be deſerted for three months, and deprived of her ornaments and houſehold furniture:

2. But

2. But ſhe, who is averſe from a mad huſband, or a deadly ſinner, or an eunuch, or one without manly ſtrength, or one afflicted with ſuch maladies as puniſh crimes, muſt neither be deſerted nor ſtripped of her property.

THAT woman, who, omitting due attention and the like, neglects a huſband addicted to gaming and ſimilar vices, fond of inebriating liquors, or diſeaſed, muſt be unapproached for three months, and deprived of her ornaments, her bed, and other furniture.

CULLU'CABHATTA.

HERE one addicted to intoxication, but not degraded, is meant. As her neglect of a depraved huſband is a ſlight offence, the puniſhment is ſmall; but, if ſhe repeatedly neglect him, it is proper, that ſhe ſhould be repeatedly forſaken.

BUT ſhe, who attends not a huſband, whoſe mind is alienated by the effect of air or other conſtitutional element, or a deadly ſinner (as deſcribed in the eleventh chapter), or unmanned, or deſtitute of manly ſtrength (from an obſtruction of the ſeminal juices or the like), or degraded becauſe he is afflicted with leproſy or a ſimilar diſeaſe, muſt not be deſerted, nor deprived of her property.

CULLU'CABHATTA.

"As deſcribed in the eleventh chapter;" for there crimes in the firſt degree and ſo forth are mentioned. *

"ONE without manly ſtrength;" impotent, though apparently poſſeſſing manhood. "Averſion from a huſband;" want of diligent attention, not abſolute deſertion; for a text declares,

LVIII.

A HUSBAND, who is not an outcaſt, ſhould not be forſaken by women deſirous of happineſs in another world.

* Chapter xi. v. 55, &c.

And it is *thus* ſhown, that a huſband, who is not degraded, may not be forſaken.

LIX.

Na'reda:—A husband, who abandons an affectionate wife, or her, who ſpeaks not harſhly, who is ſenſible, conſtant and fruitful, ſhall be brought to his duty by the king with a ſevere chaſtiſement.

A husband, deſerting a wife endued with excellent qualities, to connect himſelf with another wife and ſo forth, incurs a ſevere chaſtiſement; that is, the puniſhment of a thief; for, on the ſubject of the puniſhment of robbery,

LX.

Vishnu *ſays:*—The man, who deſerts a faultleſs wife, *ſhall ſuffer the ſame puniſhment.*

LXI.

De'vala:—No atonement is ordained for that man, who forſakes his own wife, through deluſion of mind, deſerting *her* illegally; nor for him, who forſakes a virtuous ſon.

"Deserting illegally;" abandoning *her* contrary to law.

The *Retnácara.*

"Deserting illegally" is an epithet of the preceding term; thus the ſenſe is, "that man, who abandons his wife illegally, or forſakes a virtuous ſon."

LXII.

De'vala:—A man may exclude from his bed, or from pilgrimage *(for the term is explained in both ſenſes)*, a wife who is afflicted with leproſy, degraded from her claſs, barren, or inſane, whoſe courſes are ſtopped, or who is wicked; but *he may* not *exclude her* from all buſineſs.

" FROM his bed;" according to the *Retnácara*. Others expound it " from pilgrimage," but in a general ſenſe, comprehending careſſes and the like.

" *Not* from *all* buſineſs;" not from buſineſs of which ſhe is capable.

SU'LAPA NI.

WOMEN afflicted with leproſy, and the reſt, are excluded from ſexual intercourſe: commerce with their huſbands is forbidden; but they are not univerſally excluded from all buſineſs. However, women degraded from their claſs, and the reſt, are alſo rejected in matters pertaining to acts of religion. Of theſe women, ſhe, who is afflicted with leproſy, is debarred from commerce with her huſband, becauſe intercourſe is improper; ſhe, who is degraded, leſt a taint of ſin be contracted from her; ſhe, who is barren, becauſe it would be vain; ſhe, who is inſane, becauſe the text forbids it, or becauſe ſhe is conſidered as tainted with ſin; ſhe, whoſe courſes are ſtopped, becauſe *the probability of* conception may be queſtioned; and ſhe, who is wicked, becauſe ſhe is an object of averſion.

LXIII.

NA'REDA:—IT is a crime in them both, if they deſert each other, or if they perſiſt in mutual altercation, except in the caſe of adultery by a guarded wife.

2. LET a man baniſh from his houſe a wife, who embezzles all *his* wealth under pretence of female property, or who procures an abortion, or who wiſhes the death of her huſband.

" CRIME;" ſin.

The *Retnácara*.

UNLESS a wife, who is diligently guarded, be diſloyal, both huſband and wife, forſaking each other, are guilty of a heinous ſin; but there is none in abandoning a diſloyal wife. Thus ſome expound the text.

" WHO

" WHO embezzles all *his* wealth under pretence of female property;" one, by whom all property is embezzled as female property.

The *Retnácara.*

THAT is, as her own female property.

A WIFE, by whom all *his* wealth is falsely included in female property.

The *Calpa drúma.*

" LET him banish from his house;" banishing her from the principal habitation, let him assign her a *separate* dwelling within his close. Thus some expound the law.

LXIV.

Uncertain:—LET him banish from the house a wife, who constantly dissipates wealth, and who speaks unkindly, and her, who eats before her husband:

2. Let him never dignify with his love a barren wife, nor her, who bears only daughters, nor one, who is ever contumacious; if he do, he partakes of her faults.

LXV.

MENU:—THAT woman, who, having bathed after her courses, refuses the approaches of her husband, let him banish, proclaiming her, in the middle of the town, guilty of infanticide.

2. AND her, who, through aversion from her husband, falsely pretends to have her courses, let him banish, proclaiming her, in the presence of kinsmen, guilty of infanticide.

" AVERSION;" hatred. In the preceding case a motive is supposed in the want of affection, but short of hatred; thus the texts are not without a difference.

Or the laſt text relates to many inſtances of *deception in regard to* her courſes; *the firſt concerns a ſingle refuſal.* The *Retnácara.*

" Proclaiming her offence;" announcing her guilty of infanticide; becauſe ſhe has oppoſed the procreation of an embryo, declaring her equally guilty with the ſlayer of an infant. Her refuſal of going near her huſband is the ſubject of the firſt text; the ſubject of the ſecond is her refuſal of his careſſes, through hatred, though ſhe have attended him. Such is the diſtinction according to other *lawyers.* On this conſtruction, ſince the firſt caſe does not clearly ſtate a motive different from hatred, the ſenſe of the laſt text is included in the firſt; if ſhe deceive her huſband many times in regard to her menſes, ſhe has of courſe deceived him in one inſtance.

LXVI.

Baudha'yana:—Prudent men forſake a wife, who neglects due attendance, *who is barren or immoral, or* who frequents the houſes of ſtrangers; *they* inſtantly *forſake* one who ſpeaks unkindly:

2. In the tenth year a man may forſake one, who bears no children; in the twelfth, one who bears daughters only; in the fifteenth, one whoſe children are *all* dead; but inſtantly, one who ſpeaks unkindly.

" Immoral;" vicious. " They inſtantly forſake one who ſpeaks unkindly:" they forthwith abandon her. Thus, a man ſhould endeavour to reclaim one, who neglects due attendance and ſo forth; but no ſuch endeavour is uſed with one, who ſpeaks unkindly. A man may forſake a barren wife in the tenth year after the period, when pregnancy might have been expected; and one, whoſe children are *all* dead, in the fifteenth year after the death of her children.

LXVII.

Menu:—A wife, who drinks any ſpirituous liquors, who acts immorally, who ſhows hatred *to her lord,* who is *incu-*

rably

rably diſeaſed, who is miſchievous, who waſtes his property, may at all times be ſuperſeded by another wife.

A WIFE, who is addicted to the uſe of any forbidden ſpirituous liquor, whoſe conduct is vicious, who is diſpoſed to act in oppoſition to her huſband, who is afflicted with leproſy or other *ſimilar* diſeaſe, who is diſpoſed to injure her huſband, and who continually ſquanders *his wealth*, may be ſuperſeded: that is, another marriage may be contracted, though ſhe be living.

CULLÚCABHATTA.

A *ſecond* marriage, *or one* ſubſequent to hers, contracted by her huſband, is ſuperſeſſion.

LXVIII.

YA'JNYAWALCYA:—ONE, who drinks inebriating liquors, who is *incurably* diſeaſed, who is quarrelſome, or barren, who waſtes his wealth, who ſpeaks unkindly, who brings forth only daughters, may be ſuperſeded by another wife; and ſo may ſhe, who manifeſts hatred to her huſband.

WHO drinks ſpirituous liquors, whether ſhe be of the ſervile, or other claſs; for the prohibition is general.

LXIX.

HALF his body periſhes, whoſe wife drinks intoxicating liquors.

"DISEASED" (LXVIII); infected with a laſting malady. "Quarrelſome;" contentious. "Barren;" unprolifick. "Who waſtes *his* wealth;" who diſſipates his property. "Who ſpeaks unkindly;" whoſe diſcourſe is evil. "Who brings forth daughters;" who bears daughters only. "Who manifeſts hatred to her huſband;" who acts, on every occaſion, injuriouſly to him.

The *Mitácſhará*.

"ONE, who drinks inebriating liquors;" *meaning* the wife of a twice-

born man. " Diſeaſed;" and *therefore* incapable of houſehold affairs. " Quarrelſome;" or wilful. Naturally " barren." " Who attempts her own life" (for the gloſs ſubſtitutes *átmaghnì* for *art'hagbnì*); who attempts ſuicide by hanging herſelf or otherwiſe. " Who ſpeaks unkindly;" ' to her huſband' muſt be ſupplied. " Who brings forth daughters;" who bears only daughters. " Who manifeſts hatred to a man;" who deteſts the ſon of *her huſband by* another *wife*, and ſo forth.

The *Dípacalicà*.

THE text cited (LXIX) concerns a twice-born man; for thoſe, who are not degraded in conſequence of drinking ſpirituous liquors themſelves, are not degraded in conſequence of their wives drinking intoxicating liquors. Such is the opinion intimated in the *Dípacalicà*. The wives of thoſe, who are not permitted to drink inebriating liquors, muſt be forſaken, if they be addicted to the evil practice of intoxication from drinking ſuch liquors; for they are degraded: but the deſertion of all degraded women is enjoined in another text. This remark is made by other *commentaters*.

LXX.

MENU:—A BARREN wife may be ſuperſeded by another in the eighth year: ſhe, whoſe children are all dead, in the tenth; ſhe, who brings forth *only* daughters, in the eleventh; ſhe, who ſpeaks unkindly, without delay.

IN the eighth year of barrenneſs, counted from the firſt ſeaſon, ſhe may be ſuperſeded: one, whoſe children are *all* dead, in the tenth; and one, who bears *only* daughters, in the eleventh: but ſhe, who ſpeaks unkindly, without delay, provided ſhe have no ſon, *i.e.* if ſhe have male iſſue, ſhe may not be ſuperſeded, ſince that is prohibited by another ſage (LXXI).

CULLU'CABHATTA.

LXXI.

IF his wife be virtuous and have borne a ſon, let not a man contract another marriage, unleſs he do ſo on *the* loſs *of his wife or ſon*.

" VIRTUOUS"

"VIRTUOUS" here intends speaking affectionately and so forth. No inconsistency with the text of BAUDHA'YANA (LXVI) can be here alleged; for he speaks of desertion, but MENU speaks of a second marriage. It must be noticed, that it appears from the text of MENU (LXX), which permits the supersession of a barren wife in the eighth year and so forth, and from the other text (LXXI), which forbids the supersession of a virtuous wife who has borne a son, that a second marriage should not be contracted without some fault on the part of the first wife. But marriages with women of the four classes may be contracted by an amorous man, with the consent of his first wife any how obtained.

VIJNYA'NE'SWARA, quoting the following text with this remark, 'YA'JNYA'AWALCYA denounces *punishment* against one who supersedes *his wife* without just cause for supersession,' adds, 'he who forsakes, that is, supersedes, 'such a wife, shall be compelled by the king to pay the third part of his property.'

LXXII.

YA'JNYAWALCYA:—HE, who forsakes a wife, though obedient to his commands, diligent in household management, mother of an excellent son, and speaking kindly, shall be compelled to pay the third part *of his wealth; or, if* poor, to provide a maintenance for that wife.

BUT the author of the *Dipacalica* has not explained this desertion as consisting in supersession.

LXXIII.

MENU:—BUT she, who, though afflicted with illness, is beloved and virtuous, must never be disgraced, though she may be superseded by another wife with her own consent.

WITH the assent of her again, who, though afflicted with disease, is obedient to her husband, and virtuous, another marriage may be contracted; but she must never be disgraced. CULLU'CABHATTA.

"AFFLICTED"

" AFFLICTED with illneſs" is not to be taken in a large ſenſe, comprehending accidental barrenneſs and the like; for progeny is declared neceſſary. This is remarked by other *lawyers*.

LXXIV.

YA'JNYAWALCYA:—BUT a ſuperſeded wife muſt be maintained; elſe a great offence is committed.

THOUGH ſuperſeded by another wife, ſhe muſt be treated with courteſy, and receive gifts and reſpect as before; elſe, (that is, if ſhe be not maintained,) a heinous ſin is committed, and a fine is incurred as will be mentioned.

VIJNYA'NE'SWARA.

BUT no reverence, ſay others, is due to a degraded woman.

" A FINE, as will be mentioned;" alluding to the forfeiture of a third part of his property (LXXII). It ſhould be here noticed, that a woman addicted to inebriating liquors (LXVIII) comprehends, in a general ſenſe, any woman liable to abandonment, as declared by other ſages.

LXXV.

MENU:—IF a wife, legally ſuperſeded, ſhall depart in wrath from the houſe, ſhe muſt either inſtantly be confined, or abandoned in the preſence of the whole family.

THAT wife again, who, being ſuperſeded, departs in wrath from the houſe, ſhould be inſtantly chaſtiſed with a rope or the like, and compelled to ſtay; or, if her reſentment cannot be repreſſed, ſhe muſt be abandoned in the preſence of her father and the reſt of her family.

CULLU'CABHATTA.

THIS abandoning of her in the preſence of her family is a repudiation proclaimed to all in this form, " ſhe is now rejected by me;" and afterwards, offences committed by that woman do not affect the man.

LXXVI.

LXXVI.

VA'SISHT'HA:—FROM connubial intercourſe, from pilgrimage, from what pertains to acts of religion, theſe four ſhould be rejected; *namely* one, who yields herſelf to her huſband's pupil, or to his ſpiritual parent,

2. And ſpecially one, who attempts the life of her lord, or who converſes with the vileſt *of men*.

" VILE;" deſpicable, as a *Chándála* or the like.

The *Retnácara*.

" VILE;" abjeſt, begotten in the inverſe order of the claſſes.

The *Dipacalicá*.

OTHERS add, that " rejection" means excluſion from connubial intercourſe and the reſt.

LXXVII.

YA'JNYAWALCYA:—FROM diſloyalty *in thought* a woman is purified by her courſes; but, in caſe of conception *by unlawful commerce*, deſertion is enjoined by the law; and ſo, in the caſe of her deſtroying an embryo, or ſlaying her huſband, or committing any ſin in the firſt degree.

SINCE a text of MENU expreſſes, that a woman, whoſe thoughts have been unchaſte, is purified by her monthly diſcharge,* this purification by her courſes concerns mental diſloyalty. But, if ſhe have conceived by a man of low claſs, ſhe muſt be forſaken; of courſe expiation is ſuggeſted in caſe of diſloyalty in mind or body, provided ſhe do not conceive. If ſhe deſtroy an embryo, ſlay her huſband, or commit any ſin in the firſt degree, ſhe muſt be forſaken. SU'LAPA'NI.

VIJNYA'NE'S'WARA concurs in that expoſition; but explains " in caſe of

* Chapter 5, v. 108.

conception,"

conception," in cafe of pregnancy by commerce with a man of the fervile clafs, and quotes the following text of law.

LXXVIII.

WIVES of *Brahmanas*, *Cfhatriyas* and *Vaifyas*, approached by a man of the fervile clafs, are purified by penance, provided they bring forth no children *by fuch commerce;* and not otherwife.

LXXIX.

HA'RI'TA:—A MAN fhould avoid her, who has deftroyed an embryo, has criminally converfed with a man of low clafs, with a pupil, or with a fon, is addicted to drinking or to brawls, or waftes property or *ftores of* grain.

LXXX.

MENU:—THAT a woman, who follows her own will, fhould be forfaken, is ordained by the law; but let not a man flay his wife, or mutilate her perfon:

2. VIVASWAT* declared, that a woman, wilfully difloyal, fhould be forfaken, not flain nor disfigured; a man fhould avoid the flaughter of women.

HE declared, that fhe fhould not be flain nor disfigured.

The *Retnácara.*

LXXXI.

NA'REDA:—IF a woman be difloyal, ignominous tonfure, the loweft bed, the meaneft food, the worft habitation, and the talk of removing filth, conftitute her punifhment.

LXXXII.

YA'JNYAWALCYA:—LET a man keep a difloyal wife depriv-

* Title of Sa'kya.

ed

ed of her rights, ſqualid, maintained on a ball of grain alone, ſubdued, and *only* ſuffered to repoſe on the meaneſt bed.

ON this CHANDE'SWARA remarks, that 'rejection and other penalties are denounced againſt diſloyal wives, according as the offence is heinous or venial. the rule of deciſion muſt depend on the ſeveral diſtinctions of diſloyalty.' Meaning wilful and caſual diſloyalty, and other diſtinctions. But VIJNYA'NESWARA ſays, ſhe, who is diſloyal, ſhould be kept by her huſband in his own houſe "deprived of her rights," that is, diveſted of her right to maintenance, to jewels and the like; "ſqualid," or deſtitute of collyrium, perfumed unguents, apparel and ornaments; "ſubdued" by reſtricting her food to the mere ſuſtenance of life, and by other expedients; and only ſuffered to repoſe on the meaneſt bed, or on the bare ground: *let him ſo treat her*, for the ſake of inducing repentance, not for the ſake of atonement; ſince penance is ſeparately mentioned.

MENU:—A WIFE, exceſſively corrupt, let her huſband confine to one apartment, and compel her to perform the penance ordained for a man, who has committed adultery.*

SLEEPING on the bare ground and ſo forth is her puniſhment, according to other lawyers.

TO prevent the repetition of diſloyalty, let him confine her in her own apartment, allowing her a ball of rice *only* for her ſuſtenance.

SU'LAPA'NI.

LXXXIII.

VRIHASPATI: —A WIFE, who is diſloyal *though* maintained and guarded, let a man keep in his houſe, ſqualid in her perſon, ſuffered only to repoſe on the loweſt bed, and maintained on a ball of grain alone:

* The laſt hemiſtich only was inſerted, I cite the whole verſe, as the quotation would not otherwiſe be intelligible.

2. But

2. But ſhe, who has *criminally* converſed with a man of low claſs, may legally be forſaken, or *even* put to death.

SOME remark, that the prohibition of putting a wife to death (LXXX) does not extend to the caſe of adultery with a man of low claſs.

LXXXIV.

Smr'ti, quoted in the *Mitácſhará*: — HE, who refuſes to approach his wife, when ſhe has bathed after her courſes, doubtleſs ſinks to the region of horrour, where the ſlayers of prieſts are tortured.

LXXXV.

YA'JNYAWALCYA: —SO'MA gave them fairneſs; a *Gand'harva* endowed them with a charming voice; and the regent of fire, with univerſal purity: hence women are truly pure.

THEREFORE, in reſpect of univerſal contact, embraces and the like, women are conſidered as pure and undefiled.

VIJNYA'NE'SWARA.

A MAN, therefore, muſt neceſſarily approach an unoffending wife at the preſcribed ſeaſon, elſe he would be criminal, and his wife would not be guarded. All this muſt be maintained by the king

CHAPTER II.

ON THE DUTIES OF A WIFE.

SECTION I.

ON THE CONDUCT ENJOINED TO WOMEN, WHOSE PROTECTORS ARE PRESENT.

LXXXVI.

MENU:—By a girl, or by a young woman, or by a woman advanced in years, nothing muſt be done, even in her own dwelling place, according to her mere pleaſure:

2. In childhood muſt a female be dependent on her father; in youth, on her huſband; her lord being dead, on her ſon; *if ſhe have no ſons, on the near kinſmen of her huſband; if he left no kinſmen, on thoſe of her father; if ſhe have no paternal kinſmen, on the ſovereign;* a woman muſt never ſeek independence.

3. NEVER let her wiſh to ſeparate herſelf from her father, her huſband, or her ſons; for, by a ſeparation from them, ſhe expoſes both families to contempt.

THUS, if ſhe receive the careſſes of any man but her huſband, in conſequence of her ſeparation from theſe protectors, both families are diſhonoured.

preparation of food and condiments, the loweſt ſeat and bed, ſuch is declared to be the proper conduct of women.

"PREPARATION of food and condiments," the dreſſing of victuals and

LXXXVII.

YA'JNYAWALCYA: —CAREFUL of the domeſtick furniture, diligent in the management of the houſehold affairs, cheerful, avoiding expenſe, let her ſhow reverence to her huſband's parents, obſequiouſly honouring her lord.

CAREFULLY repoſiting, in their places, the domeſtick furniture, or ſeats and utenſils employed in the houſe; as the peſtle, mortar and winnowing baſket and the like, in the place where grain is huſked; and the grinding ſtone and pebble together, in the place where things are ground; and ſo forth.

The *Mitacſhará.*

'SU'LAPA'NI *alſo explains the ſame term,* 'repoſiting the *houſehold* utenſils.'

LXXXVIII.

Smriti, quoted in the *Retnácara:* — AN affectionate well-wiſher to her lord, ſtrict in her conduct, keeping her ſenſes in ſubjection, ſhe acquires renown in this world, and, after her death, the higheſt abode.

ENTERTAINING good wiſhes founded on affection.

'SU'LAPA'NI.

"AFFECTION," excluſive mental regard. and wiſhing that, which is beſt in a moment of diſtreſs. VIJNYA'NE'SWARA.

LXXXIX.

MENU:—SHE muſt always live with a cheerful temper, with good management in the affairs of the houſe, with great care of the houſehold furniture, and with a frugal hand in all her expenſes.

XC.

VRI'HASPATI:—RISING early, reverence to venerable perſons, preparation

preparation of food and condiments, the loweſt ſeat and bed; ſuch is declared to be the proper conduct of women.

" PREPARATION of food and condiments;" the dreſſing of victuals and the like.

XCI.

DE'VALA :—DEPENDENCE, attendance on her huſband, aid in his religious ceremonies, reſpectful behaviour to thoſe who are entitled to veneration from him, hatred to thoſe who bear enmity to him, no ill will towards him, conſtant complacency, attention to his buſineſs, are the duties of women.

" AID in his religious ceremonies;" attendance on her lord when the ſacrificial fire is ſupplied, when offerings are made, and ſo forth. Reſpectful behaviour to his father and others entitled to veneration and reſpect from him. " Hatred to thoſe who bear enmity to him;" *for* no benefit ſhould be conferred by a woman on thoſe, who injure her huſband, even though they ſooth her with praiſe. " No ill will towards him;" no thoughts injurious to her huſband. " Attention to his buſineſs;" induſtry in buſineſs which concerns her huſband.

XCII.

VISHNU, after premiſing " duties of women:" — ACCOMPANYING of her huſband, reverence of his father, of ſpiritual parents, of deities and gueſts, great cleanlineſs in regard to the domeſtick furniture and care of the houſehold veſſels, avoiding the uſe of philters and charms, attention to auſpicious cuſtoms, auſterities after the death of her huſband, no frequenting of ſtrange houſes, no ſtanding at the door or window, dependence in all affairs, ſubjection to her father, huſband and ſon, in childhood, youth and age; *ſuch are the duties of a woman.*

" ACCOMPANYING

" ACCOMPANYING of her husband;" going wherever her husband goes, but to no place unauthorized by him: or it may be read, attending him at his religious ceremonies. " Use of philters and charms;" subduing by incantations and drugs. " Standing at the door and window," to gaze at her husband's countenance: or " not standing at the door and window," lest her husband should entertain suspicions of her holding commerce with other men.

XCIII.

The *Mahábhárata*:—SHOULD her husband discover a woman to be wholly addicted to charms and philters, let him shun her, as he would a serpent which had crept into his house.

XCIV.

Speech of the goddess of abundance to the goddess of the earth, quoted in the *Retnácara*:* —" WITH women ever pure and adorned, faithful to their lords, speaking kindly, not lavish, blessed with progeny, careful of the household goods, attentive to religious worship,

2. " Whose houses are neat, whose senses are subdued, who avoid strife, who are not avaricious, who respect their duty, who are endued with tenderness, I am ever present, O thou supporter of worlds!"

" ATTENTIVE to religious worship," attentive to the business of providing oblations for the worship of deities and for other sacraments. " Who avoid strife" or contention. " Who are not avaricious;" who are not covetous.

XCV.

SANC'HA & LIC'HITA:—FOR every succeeding day let the wife clean the vessels used at meals; let her sweep the dwelling house and gate, and, when clean, preserve it so;

* From VISHNU, if the citation in the *Vivádárnava* be correct.

let